

IN THE  
**United States Circuit Court of Appeals**  
FOR THE NINTH CIRCUIT.

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THOMAS R. SHERIDAN,

*Plaintiff in Error,*

VS.

THE UNITED STATES OF AMERICA,

*Defendant in Error.*

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**TRANSCRIPT OF RECORD**

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In Error to the District Court of the United States  
for the District of Oregon.

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**Filed**

DEC 13 1915

**F. D. Monckton,**  
Clerk.



No. \_\_\_\_\_

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*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

THOMAS R. SHERIDAN,

*Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA,

*Defendant in Error.*

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

Mr. John L. McNab,

Humboldt Bank Building, San Francisco, Cal., and

Mr. Charles W. Fulton,

Yeon Building, Portland, Oregon,

For Plaintiff in Error.

Mr. Clarence L. Reames,

United States Attorney, and

Mr. Robert R. Rankin,

Assistant United States Attorney, Postoffice  
Building, Portland, Oregon,

For the Defendant in Error.

*In the District Court of the United States, for the  
District of Oregon.*

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

THOMAS R. SHERIDAN,

*Defendant.*

*CITATION ON WRIT OF ERROR.*

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the  
United States of America, and to Clarence L.  
Reames, United States Attorney for the District of  
Oregon.

Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the District of Oregon, wherein Thomas R. Sheridan is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered

against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 26th day of October, in the year of our Lord one thousand nine hundred and fifteen.

R. S. BEAN,  
United States District Judge.

Attest:

..... G. H. MARSH

Clerk of the District Court of the United States for the  
District of Oregon.

Due and legal service of the above and foregoing citation, and receipt of a copy thereof, is hereby accepted and admitted, in the City of Portland, State of Oregon, this 25th day of October, 1915.

CLARENCE L. REAMES,  
United States Attorney.

Filed October 26, 1915. G. H. Marsh, Clerk.

*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

THOMAS R. SHERIDAN,

*Defendant.*

*WRIT OF ERROR.*

UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the  
Honorable, the Judge of the District Court of the  
United States for the District of Oregon.

Greeting:

Because in the record and proceedings, as also in  
the rendition of the judgment of a plea which is in the  
said District Court, before the Honorable Frank H.  
Rudkin, United States District Judge, between the  
United States of America, plaintiff and defendant in  
error, and Thomas R. Sheridan, defendant and plain-  
tiff in error, a manifest error hath happened, to the great  
damage of the said plaintiff in error as by his complaint  
appears:

We being willing that error, if any hath been, should  
be duly corrected, and full and speedy justice done to  
the parties aforesaid in this behalf, do command you,

if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 26th day of October, in the year of our Lord, one thousand nine hundred and fifteen.

(Seal) G. H. MARSH,  
Clerk, U. S. District Court for the District of Oregon.

Service of the above Writ of Error made this 26th day of October, in the year of our Lord, one thousand nine hundred and fifteen, upon the District Court of the United States, for the District of Oregon, by filing with me as Clerk of said Court, a duly certified copy of said Writ of Error.

G. H. MARSH,  
Clerk of the District Court of the United States for the District of Oregon.

Filed October 26, 1915. G. H. Marsh, Clerk,  
United States District Court, District of Oregon.

*In the District Court of the United States for the  
District of Oregon.*

NOVEMBER TERM, 1913.

BE IT REMEMBERED, That on the 28th day of February, 1914, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment, in words and figures as follows, to wit:

*In the District Court of the United States for the  
District of Oregon.*

INDICTMENT.

UNITED STATES OF AMERICA,

vs.

THOMAS R. SHERIDAN,

Defendant.

Indictment for Violation of Section 5209, U. S. Revised  
Statutes.

United States of America,  
District of Oregon,—ss.

In the Honorable United States District Court for the District of Oregon, sitting at and in the City of Portland, within said district, at its regular November Term, A. D. 1913-1914;

In the name and by the authority of the United States of America, comes now the grand jury of the

United States of America and of the District of Oregon, and being first duly selected, empaneled, sworn and charged to inquire concerning the commission of crimes within and for said district, upon their oaths and affirmations, in open court, do find, charge, allege and present:

### COUNT ONE.

That Thomas R. Sheridan, the above named defendant, heretofore to wit, on the 7th day of March, 1911, in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there President of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on to wit: the 7th day of March, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, and to the use, benefit and advantage of one B. C. Agee, certain moneys, funds and credits of said National Banking Association, of the amount and value of Two Hundred and Thirty (\$230.00) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and

credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one David Hull, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

## COUNT TWO.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 22d day of March, 1911, in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there President of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above men-

tioned being such president, did then and there at said City of Roseburg, County of Douglas, in the State and District of Oregon, on to wit: the 22d day of March, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, and to the use, benefit and advantage of one W. P. Reed, certain moneys, funds and credits of said National Banking Association, of the amount and value of Five Hundred and Thirty (\$530.00) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one M. S. Doerstler, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said banking association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association, and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

### COUNT THREE.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 7th day of April, 1911, in the County of Douglas, within the State and District of Oregon and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on to wit: the 7th day of April, 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said National Banking Association, of the amount and value of one Thousand (\$1,000) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by the said National Banking Association as a deposit for the sole use and benefit of one W. J. Carlon, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to

injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

#### COUNT FOUR.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 15th day of April, 1911, in the County of Douglas, within the State and District of Oregon and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned, being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on, to wit: the 15th day of April, 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said

National Banking Association, of the amount and value of Five Thousand (\$5,000) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one Laura M. Verrill, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

### COUNT FIVE.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 27th day of April, 1911, in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and es-

tablished and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on, to wit: the 27th day of April, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said National Banking Association, of the amount and value of Five Hundred (\$500.00) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one W. J. Carlon, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

## COUNT SIX.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 27th day of April, 1911, in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on, to wit: The 27th day of April, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said National Banking Association, of the amount and value of Two Hundred and Sixty (\$260.00) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one M. S. Doerstler, a depos-

itor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said banking association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

### COUNT SEVEN.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, on, to wit: the 24th day of May, 1911, in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas,

in the State and District of Oregon, on, to wit: the 24th day of May, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said National Banking Association, of the amount and value of Five Thousand Five Hundred (\$5,500.00) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one J. E. Haney, a depositor and creditor of said The First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

### COUNT EIGHT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That Thomas R. Sheridan, the above named defendant, heretofore, to wit: On the 29th day of May, 1911,

in the County of Douglas, within the State and District of Oregon, and within the jurisdiction of this Court, was then and there president of a certain National Banking Association, to wit: The First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the City of Roseburg, in the County of Douglas, within the state and district aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being such president, did then and there at the said City of Roseburg, County of Douglas, in the State and District of Oregon, on, to wit: the 29th day of May, A. D. 1911, wilfully and unlawfully abstract and convert and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, certain moneys, funds and credits of said National Banking Association, of the amount and value of Five Thousand (\$5,000) Dollars, a more particular description of which is to this grand jury unknown, from and out of the moneys, funds and credits of said National Banking Association, held by said National Banking Association as a deposit for the sole use and benefit of one C. E. Marks, a depositor and creditor of said The First National Bank of Roseburg, Oregon, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 21st day of February, 1914.

**A TRUE BILL.**

(Signed) D. L. KEYT,  
Foreman U. S. Grand Jury.

(Signed) ROBERT R. RANKIN,  
Assistant U. S. Attorney.

Witnesses sworn and examined before said United States Grand Jury:

S. A. Sanford.

C. E. Marks.

A. M. Kelsey.

B. C. Agee.

W. J. Carlon.

M. S. Doerstler.

E. E. Haines.

David Hull.

H. P. Marks.

C. J. Marks.

E. P. Preble.

Laura M. Verrill.

J. E. Haney.

Thomas R. Sheridan (at his own request).

Miles Agee.

W. E. Chapman.  
Mrs. W. T. De War.  
Mrs. T. D. Barry.  
J. F. Hoover.  
Dr. H. Little.  
G. P. McNamee.  
E. C. Marks.  
Nettie Scranton.  
Mrs. Anna E. Carroll.  
Mrs. John Byron.

Endorsed: A True Bill.

D. L. KEYT,  
Foreman Grand Jury.

Filed February 28, 1914. A. M. Cannon, Clerk.

And afterwards, to wit: On Wednesday, the 4th day of March, 1914, the same being the 3d judicial day of the regular March term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

### RECORD OF ARRAIGNMENT.

Now, at this day come the plaintiff by Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person, and by Mr. Charles W. Fulton, of counsel: Whereupon said defendant is duly arraigned upon the indictment herein, and on

motion of said defendant it is hereby ordered that he be allowed until March 16, 1914, in which to plead to said indictment.

And afterwards, to wit: On the 13th day of March, 1915, there was duly filed in said Court, and cause a Demurrer to Indictment, in words and figures as follows, to wit:

### DEMURRER.

And the said Thomas R. Sheridan, defendant in the above entitled cause, in his own proper person, comes into court here, and having heard the indictment in said cause against him read, says:

1. That as to Count One of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

2. That as to Count Two of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

3. That as to Count Three of said indictment and the matters therein contained, in manner and form as

the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

4. That as to Count Four of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

5. That as to Count Five of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

6. That as to Count Six of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

7. That as to Count Seven of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

8. That as to Count Eight of said indictment and the matters therein contained, in manner and form as the same are stated and set forth in said indictment, are not sufficient in law, and that he, the said Thomas R. Sheridan, is not bound by the law of the land to answer the same; and this he is ready to verify.

WHEREFORE, For want of a sufficient indictment in this behalf, the said Thomas R. Sheridan prays judgment and that by the Court he may be dismissed and discharged from the said premises in the said indictment specified.

**FULTON & BOWERMAN,**  
Attorneys for defendant.

State of Oregon,  
County of Multnomah,—ss.

Due service of the within Demurrer by the delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this 10th day of March, 1915, is hereby admitted.

**CLARENCE L. REAMES,**  
Of Attorneys for Plaintiff.

Filed March 13, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 15th day of March, 1914, the same being the 13th judicial day of the regular March term of said Court; present: the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presid-

ing, the following proceedings were had in said cause, to wit:

## ORDER OVERRULING DEMURRER AND RECORD OF PLEA.

This cause was heard upon the demurrer of the defendant to the indictment herein, and was argued by Mr. Clarence L. Reames, United States Attorney, and by Mr. Robert R. Rankin, Assistant United States Attorney, and by Mr. Charles W. Fulton, of counsel for said defendant. Upon consideration whereof, it is ordered and adjudged that said demurrer be, and the same is hereby overruled, and that said defendant be allowed an exception to this ruling. And thereupon said defendant for plea to the indictment herein, says he is not guilty.

And afterwards, to-wit, on Monday, the 22d day of March, 1915, the same being the 19th judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

## RECORD OF EMPANELING JURY AND TRIAL.

Now, at this day, come the plaintiff, by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the

defendant in his own proper person and by Mr. Charles W. Fulton, Mr. J. W. Bennett and Mr. Elbert B. Hermann of counsel, whereupon this being the time set for the trial of this cause, now come the following named jurors to try the issues joined: James Guttridge, Otto W. Nelson, Robert Johnson, Alex Schick, James Horn, Wm. J. Good, B. M. Hamilton, Howard R. Ewing, C. C. Huff, R. L. Donald, George Thyng and Geo. Perkins, twelve good and lawful men of the district, who being duly accepted by both parties, are duly impaneled and sworn, and the hour of adjournment having arrived, further trial of this cause is continued until tomorrow, Tuesday, March 23, 1915.

And afterwards, to-wit, on Tuesday, the 23d day of March, 1915, the same being the 20th judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

### RECORD OF TRIAL.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed, and the jury having heard the evidence adduced, and the hour of adjournment having arrived,

and further trial of this cause is continued until tomorrow, Wednesday, March 24, 1915.

And afterwards, to-wit, on Wednesday, the 24th day of March, 1915, the same being the 21st judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

### RECORD OF TRIAL.

Now, at this day, come the plaintiff, by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed. And the jury having heard the evidence adduced, and the hour of adjournment having arrived, further trial of this cause is continued until tomorrow, Thursday, March 25, 1915.

And afterwards, to-wit, on Thursday, the 25th day of March, 1915, the same being the 22d judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

## RECORD OF TRIAL.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed. And the jury having heard the evidence adduced, and the hour of adjournment having arrived, further trial of this cause is continued until tomorrow, Friday, March 26, 1915.

And afterwards, to-wit, on Friday, the 26th day of March, 1915, the same being the 23d judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

## RECORD OF TRIAL.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed. And the jury having heard the evidence adduced, and the hour of adjournment having arrived, further trial of this cause is continued until Monday, March 29, 1915.

And afterwards, to-wit, on Monday, the 29th day of March, 1915, the same being the 25th judicial day of the regular March term of said Court; present, the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

### RECORD OF TRIAL.

Now, at this day, come the plaintiff, by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by his counsel as of Friday, and the jury impaneled herein being present and answering to their names, the trial of this cause is resumed. And said jury having heard the evidence adduced, the arguments of counsel, and the charge of the Court, retire in charge of proper sworn officers to consider of their verdict.

And afterwards, to wit, on Tuesday, the 30th day of March, 1915, the same being the 26th judicial day of the regular March term of said Court; present: the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to wit:

### RECORD OF TRIAL AND VERDICT.

Now, at this day comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr.

Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday, whereupon the jury impaneled herein come into court and answer to their names, and return into court the following verdict, viz.: "We, the jury, duly impaneled and sworn to try the above entitled criminal cause, find the above named defendant, Thomas R. Sheridan,

Guilty in manner and form as charged in Count One of the indictment; and Not Guilty in manner and form as charged in Count Two of the indictment; and Not Guilty in manner and form as charged in Count Three of the indictment; and Guilty in manner and form as charged in Count Four of the indictment; and Not Guilty in manner and form as charged in Count Five of the indictment; and Not Guilty in manner and form as charged in Count Six of the indictment; and Not Guilty in manner and form as charged in Count Seven of the indictment; and Not Guilty in manner and form as charged in Count Eight of the indictment. Dated at Portland, Oregon, this 30th day of March, 1915, R. L. Donald, Foreman of the Jury." Whereupon, on motion of said defendant, it is ordered that said jury be polled and thereupon each of said jurors in answer to his name says that the said verdict is his verdict. Whereupon it is ordered that said verdict be received and filed; and on motion of said defendant, it is ordered that he be and hereby is allowed 30 days from this date in which to file a motion for a new trial herein and to file a motion in arrest of judgment.

And afterwards, to wit, on the 30th day of March, 1915, there was duly filed in said Court and cause verdict, in words and figures as follows, to wit:

### VERDICT.

*In the District Court of the United States for the  
District of Oregon.*

UNITED STATES OF AMERICA

v.

THOMAS R. SHERIDAN,

Defendant.

### VERDICT OF JURY.

We, the jury, duly impaneled and sworn to try the above entitled criminal cause, find the above named defendant, Thomas R. Sheridan,

Guilty in manner and form as charged in Count One of the indictment; and

Not Guilty in manner and form as charged in Count Two of the indictment; and

Not Guilty in manner and form as charged in Count Three of the indictment; and

Guilty in manner and form as charged in Count Four of the indictment; and

Not Guilty in manner and form as charged in Count Five of the indictment; and

Not Guilty in manner and form as charged in Count Six of the indictment; and

Not Guilty in manner and form as charged in Count Seven of the indictment; and

Not Guilty in manner and form as charged in Count Eight of the indictment.

Dated at Portland, Oregon, this 30th day of March, 1915.

R. L. DONALD,  
Foreman of the Jury.

Filed March 30, 1915, G. H. Marsh, Clerk.

And afterwards, to wit, on the 12th day of April, 1915, there was duly filed in said Court and cause, motion in arrest of judgment and for a new trial, in words and figures as follows, to wit:

**MOTION IN ARREST OF JUDGMENT:  
MOTION FOR NEW TRIAL.**

Comes now Thomas R. Sheridan, the defendant in the above entitled cause, and the jury in said cause having heretofore returned a verdict finding said Thomas R. Sheridan guilty on Counts numbered One and Four of the indictment herein, the said defendant, Thomas R. Sheridan, now moves the Court in arrest of judgment and for a new trial, as follows:

**I.**

The defendant aforesaid represents and shows to the Court that Count One of said indictment does not state facts sufficient to constitute a crime, and does not

charge this defendant with any offense against the laws of the United States, and therefore this defendant moves the Court in arrest of judgment on said Count One.

## II.

The defendant aforesaid represents and shows to the Court that Count Four of said indictment does not state facts sufficient to constitute a crime, and does not charge this defendant with any offense against the laws of the United States, and therefore this defendant moves the Court in arrest of judgment on said Count Four.

## III.

If the motion of the said defendant aforesaid, in arrest of judgment, be not allowed as to said Count One of said indictment, then this defendant moves the Court to set aside the verdict of the jury aforesaid, finding this defendant guilty as charged in said Count One, for the following reasons:

(1) The evidence was insufficient to justify the verdict, and the verdict was against the great weight and preponderance of the evidence;

(2) That at the trial of said cause the Court erred in admitting evidence against the defendant, objected to by the defendant, and to which rulings of the Court the defendant, in each instance, then and there excepted, and his exception was allowed;

(3) The Court erred in refusing to instruct the jury as requested by the defendant at the trial of said

cause; and to such refusal of the Court, in each instance, the defendant excepted and his exception was allowed by the Court.

#### IV.

If the motion of the said defendant aforesaid, in arrest of judgment, be not allowed as to said Count Four of said indictment, then this defendant moves the Court to set aside the verdict of the jury aforesaid, finding this defendant guilty as charged in said Count Four, for the following reasons:

(1) The evidence was insufficient to justify the verdict, and the verdict was against the great weight and preponderance of the evidence;

(2) That at the trial of said cause the Court erred in admitting evidence against the defendant, objected to by the defendant, and to which rulings of the Court the defendant, in each instance, then and there excepted, and his exception was allowed;

(3) The Court erred in refusing to instruct the jury as requested by the defendant at the trial of said cause; and to such refusal of the Court, in each instance, the defendant excepted and his exception was allowed by the Court.

FULTON & BOWERMAN,

Attorneys for Defendant.

State of Oregon

County of Multnomah—ss.

Due service of the within motion by the delivery of a duly certified copy thereof as provided by law, at

Portland, Oregon, on this April 12th, 1915, is hereby admitted.

JOHN J. BECKMAN,  
Of Attorneys for Complainant.

Filed April 12, 1915, G. H. Marsh, Clerk.

And afterwards, to-wit, on Friday, the 30th day of April, 1915, the same being the 54th judicial day of the regular March term of said Court; Present: the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington, presiding, the following proceedings were had in said cause, to-wit:

ORDER DENYING MOTION IN ARREST OF  
JUDGMENT AND FOR NEW TRIAL.  
RECORD OF SENTENCE.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant in his own proper person and by Mr. C. W. Fulton of counsel, whereupon this cause comes on to be heard upon the motion of the said defendant in arrest of judgment and for a new trial herein, and the Court having heard the arguments of counsel, it is ordered and adjudged that said motions be, and the same are hereby denied; whereupon on motion of said plaintiff for judgment upon the verdict of the jury heretofore returned herein, it is considered that said

defendant be imprisoned in the United States Penitentiary at McNeils Island, Washington, for the term of five (5) years as to each of the two counts in said indictment upon which said defendant was found guilty and that these sentences run concurrently; it is further ordered that said defendant stand committed until this sentence be performed or until he be discharged according to law. Whereupon on motion of said defendant, it is ordered that he be and is hereby allowed ninety days within which to submit a bill of exceptions herein and it is further ordered that said defendant give a supersedeas bond in the sum of \$6000.00 and that upon the filing of said bond, execution of sentence herein be stayed.

And afterwards, to wit, on the 25th day of October, 1915, there was duly filed in said Court and cause a Bill of Exceptions in words and figures as follows, to wit:

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that upon the 21st day of February, 1914, an indictment was returned in the above-entitled Court, charging the defendant, Thomas R. Sheridan, with having violated Section 5209 of the Revised Statutes of the United States.

That thereafter said defendant interposed a demurrer to the said indictment.

Thereafter said demurrer was by the Court overruled, to which ruling and decision of the Court said

defendant by his Attorneys then and there excepted; and his exception was allowed.

BE IT FURTHER REMEMBERED, that on the 23rd day of March, A. D. 1915, at a stated term of the District Court of the United States for the District of Oregon, the above-entitled cause came on duly and regularly for trial before the Honorable Frank H. Rudkin, United States District Judge; the United States appearing by Mr. Clarence L. Reames, United States Attorney for said District of Oregon, and Mr. R. R. Rankin, Assistant United States Attorney for said District of Oregon; and the defendant Thomas R. Sheridan appearing in person and by Messrs. C. W. Fulton, J. R. Bennett, and Elbert Hermann, his Attorneys.

Thereupon a jury was regularly empaneled and sworn according to law, and opening statements having been made to the jury by counsel for the United States and for the defendant, respectively, the evidence hereinafter following was introduced and the following proceedings occurred.

As a part of the case of the government, and during the progress of the trial, the government introduced in evidence the following exhibits, which bear the following respective exhibit numbers:

#### GOVERNMENT'S EXHIBITS.

Exhibit No.    Character of Document.

1.    Charter 1st Nat'l Bank of Roseburg, Oregon.

2. Note 3/2/06 to David Hull, \$512.50.
3. Memorandum check, David Hull, \$800.
4. Memorandum check, David Hull, \$230.
5. Minute Book 1st Nat'l Bank, Roseburg, Oregon.
6. Note 3/4/11 to David Hull, \$230.
7. Deposit slip 3/4/11, Hull, \$230.
8. Letter, Sheridan to Mrs. Verrell, 4/6/11.
9. Memorandum check, 4/15/11, Mrs. Verrell, \$5,000.
10. Note, 4/15/11, Sheridan to Mrs. Verrell, \$5,000.
11. Memorandum check, Carlon, 4/7/11, \$1,000.
12. Note, Sheridan to Carlon, 4/7/11, \$1,000.
13. Memorandum check, 4/27/11, Carlon, \$500.
14. Note, Sheridan to Carlon, 4/27/11, \$500.
15. Memorandum check, Haney, 5/24/11, \$5,000.
16. Note, Sheridan to Haney, 5/24/11, \$5,000.
17. Memorandum check, 1/18/11, \$600. Chapman.
18. Memorandum check, 3/22/11, \$530. Doerstler.
19. Memorandum check, 4/27/11, \$260. Doerstler.
20. Note, Sheridan to Doerstler, \$260, 4/27/11.
21. Memorandum check, 5/8/08, \$1,000, Doerstler.
22. Note, Sheridan to Doerstler, \$1,000, 5/8/08.
23. Memorandum check, Doerstler, 5/1/08, \$469.
24. Note, Agee to Doerstler, 5/1/08.
25. Note, Sheridan to Doerstler, 3/30/09, \$500.
26. Memorandum check, 5/10/10, Doerstler, \$1,700.
27. Note, Kelsay to Doerstler, 5/10/10, \$700.
28. Note Sheridan to Doerstler, 5/5/10, \$1,000.
29. Note Kelsay to Doerstler, 10/6/09, \$1,000.
30. Deposit slip, credit Agee, \$469, 5/1/08.
31. Deposit slip, credit Kelsay, \$1,000, 10/6/09.

32. Memorandum check, 7/27/08, Marks, \$2,000.
33. Note, Sheridan to Marks, 7/27/08, \$2,000.
34. Memorandum check, 2/23/10, Marks, \$500.
35. Note, Sheridan to Marks, 2/23/10, \$500.
36. Note, Sheridan to Marks, 5/20/11, \$5,000.
37. Memorandum check, 8/10/09, H. P. Marks, \$745.
38. Note, Kelsay to H. P. Marks, 8/10/09, \$745.
39. Memorandum check, 1/25/10, H. P. Marks, \$540.32.
40. Note, Kelsay to H. P. Marks, 1/25/10, \$540.32.
41. Memorandum check, 1/25/10, C. J. Marks, \$500.
42. Note, Sheridan to C. P. Marks, 1/25/10, \$500.
43. Memorandum check, 2/6/11, C. J. Marks, \$800.
44. Note to C. J. Marks, 2/6/11, \$800.
- 44<sup>1</sup>/<sub>2</sub>. Memorandum check, 6/29/07, E. C. Marks, \$300.
45. Note, Agee to E. C. Marks, 6/29/07, \$300.
46. Memorandum check, 8/10/09, E. C. Marks, \$300.
47. Note, Kelsay to Marks, 8/10/09, \$300.
48. Memorandum check, 1/29/10, E. C. Marks, \$937.52.
49. Note, Sheridan to E. C. Marks, 1/29/10, \$937.52.
50. Memorandum check, 12/13/10, Marks Bros., \$3,000.
51. Note, Sheridan to Marks Bros., 12/3/10, \$3,000.
52. Memorandum check, 4/6/08, Haines, \$2,000.
53. Note, 4/6/08, to Haines, \$2,000.
54. Note, 11/26/09, Kelsay to DeWar, \$3,000.
55. Letter, Sheridan to DeWar, 12/21/09.
56. Memorandum check, Mrs. T. D. Barry, 6/28/09, \$1,000.

57. Memorandum check, Mrs. T. D. Barry, 8/29/08, \$2,000.
58. Promissory note, 12/15/09, Sheridan to Barry, \$3,000.
59. Memorandum check, 3/18/10, Mrs. Barry, \$500.
60. Note, Kelsay to Barry, 3/18/10, \$500.
61. Memorandum check, 11/28/10, \$1,000, Barry.
62. Note, Sheridan to Barry, 11/28/10, \$1,000.
63. Letter, Cooley to Sheridan, 6/4/09.
64. Note, Sheridan to Cooley, 1/2/08.
65. Note, Sheridan to Cooley, 1/7/09.
66. Letter, Sheridan to McNamee, 7/23/09.
67. Letter, McNamee to Sheridan, 2/3/11.
68. Letter, Sheridan to McNamee, 2/8/11.
69. Memorandum check 2/9/11, McNamee, \$2,956.60.
70. Note, Sheridan to McNamee, 2/9/11, \$2,956.60.
71. Letter, Sheridan to McNamee, 6/18/12.
72. Memorandum check, 2/21/10, Preble, \$3,000.
73. Note, Servia to Preble, 2/8/10, \$3,000.
74. Memorandum check, 2/24/11, Mosthaf, \$800.
75. Note, Sheridan to Mosthaf, 2/22/11, \$800.
76. Memorandum check, 2/17/09, Wende, \$1169.
77. Note, 2/17/09, to Wende, \$1,010.
78. Memorandum check, Mrs. Byron, \$1,080.25.
79. Memorandum check, 1/23/09, Hoover, \$2,500.

As a part of the defense of the defendant he introduced in evidence during the cross-examination of the several witnesses of the government, the following exhibits:

## Exhibit No.    Character of Document.

1.    Release, David Hull.
2.    Bank Book, David Hull.
3.    Release, Mrs. Verrell.
4.    Letter, Verrell to Sheridan.
5.    Letter, Verrell to Sheridan.
6.    Deposition of Haney.
7.    (a)    Bank statements, Doerstler.
7.    (b)    Bank statements, Doerstler.
7.    (c)    Bank statements, Doerstler.
8.    Release, C. J. Marks.
9.    Release, E. C. Marks.
10.   Release, Marks Bros.
11.   Letter, H. P. Marks to Sheridan, 11/16/12.
12.   Bank Book, Marks Bros.
13.   Release, McNamee.
14.   Release, Mrs. Barry.
15.   Release, Mosthaf.
16.   Letter, Mosthaf to Sheridan, 3/4/12.
17.   Letter, Mosthaf to Sheridan, 10/5/12.
18.   Letter, Mosthaf to Sheridan, 11/11/12.
19.   Release, Wende.
20.   Letter, Byron to Sheridan, 8/4/12.
21.   Letter, Byron to Sheridan, 10/30/12.
22.   Letter, Byron to Sheridan, 3/23/13.
23.   Letter, Byron to Sheridan, 10/23/12.

Some of the exhibits above set forth and enumerated have been, by stipulation of counsel, and by virtue of an order of the Court, withdrawn since the trial. As to all of these exhibits so withdrawn, certified copies

(Testimony of Charles A. Stewart and David Hull.)

thereof accompany this bill of exceptions. As to all of those exhibits not withdrawn, the originals thereof accompany this bill of exceptions.

## CHARLES A. STEWART

A witness called for the United States and sworn, testified as follows:

Direct Examination by Mr. Reames.

I am Chief Clerk in the office of the Comptroller of the Currency at Washington, D. C. I have here a certified copy of the charter of the First National Bank of Roseburg, Oregon.

The Government offered the copy of the charter in evidence and it was marked Government's Exhibit 1.

I have here the originals and certified copies of all the releases signed by former depositors of the First National Bank of Roseburg and filed in the office of the Comptroller of the Currency.

Whereupon the witness produced the said originals and the said certified copies of said releases and delivered them to the attorney for the defendant, for use during the trial, in any manner that the defendant might wish.

## DAVID HULL

A witness called on behalf of the Government, being first duly sworn, testified as follows:

### DIRECT EXAMINATION.

Questions by Mr. Reames.

I have lived in Roseburg, Oregon, about 24 years. I work in a livery stable and have followed that occupa-

(Testimony of David Hull.)

tion 12 or 14 years. I have known Mr. Sheridan for 15 or 16 years and was one of the depositors of the First National Bank of Roseburg and had a deposit with that bank for 12 or 14 years. I had a conversation with Mr. Sheridan, relative to the loaning of some of my money, in March, 1906. I told Mr. Sheridan, one day I met him, I had some money. I said, "Mr. Sheridan, how about loaning out some money to a good man?" "Am I a good man?" I said, "Yes, sir, you are, Mr. Sheridan." I never gave him any other authorization except that.

Government Exhibit No. 2 was offered and received in evidence, this being a promissory note, of date March 2, 1906, for the sum of \$512.50, payable on demand, to the order of David Hull, with interest at six per cent, it being admitted by the defendant that the note was signed by the defendant.

Witness continuing: Mr. Sheridan paid me \$10 interest on that note, and no more.

By Mr. Reames:

The purpose of it is this: The Government will contend that he had authority—what authority he had was limited to this \$500 loan, and that he got that, but that he had no authority to loan any more—that made the limit of his authority. Now, it might be contended on the part of the defense that if that loan were paid, it might be argued that he had authority to loan it again, but the purpose of proving the note has not been paid is to show that the previous authority ended there.

(Testimony of David Hull.)

COURT: If that is the purpose of it I will admit it.

MR. FULTON: It might be for that purpose.

Witness continuing: That is the only conversation or authority I ever gave him. That is the only talk me and Mr. Sheridan ever had about loaning my money.

There was received and marked for identification:

Government's Exhibit 3, being a memorandum check, dated Dec. 23, 1909, against the account of David Hull, at the First National Bank, for \$800.

Witness continuing: I never signed that memorandum check. I received a note for that \$800, being the note of John Sheridan. I first learned of this \$800 transaction about a year and a half ago. I put it into Mr. Eddy's hands. Mr. Eddy is a lawyer at Roseburg and I put my business in his hands. That was the first time I ever knew of this \$800 transaction. Mr. Eddy then told me that it was Mr. John Sheridan who owed me \$800. Upon that loan there has been \$460 paid.

By Mr. Reames:

I hand you a memorandum check, dated March 4, 1911, which I have stated to the Court forms the basis of Count No. 1 of the indictment, purporting to have been signed by David Hull, reading to the order of B. C. Agee, amount \$230, and ask you to look at it and say you signed it. Did you ever sign that?

Answer. No, sir, I never did.

Question. Did you ever authorize Mr. Sheridan to loan your money to Mr. B. C. Agee?

(Testimony of David Hull.)

A. No, sir, I never did.

Q. When did you first learn that your money was loaned to Mr. B. C. Agee?

A. Well, I got a letter from the National Bank Examiner; got it out of the post office; took it to Mr. Hedgpeth; had him read it, and he said, "That is all right," so I had him sign my name. That was the first time I knew my money had been loaned to Mr. Agee. I cannot read or write.

Q. I have your promissory note, of date March 4, 1911, the same date as the memorandum check, in your favor, for \$230. Did you ever have possession of that note? Did Mr. Sheridan ever give you possession of that note?

A. No, sir, not that I know of.

The memorandum check, of date March 4, 1911, was marked Government's Exhibit 4, for identification.

By Mr. Reames:

That is the transaction on which we rely on Count 1 of the indictment.

Witness continuing: I never met National Bank Examiner Goodhart.

Q. I hand you here a letter written to you under date of June 20, 1911, the original of a letter addressed to Mr. David Hull at Roseburg, Oregon, purporting to be signed by Richard W. Goodheart, National Bank Examiner, with release at the bottom signed by David Hull, and ask you whether or not you wrote that. Did you write your signature there?

(Testimony of David Hull.)

A. No, sir, I did not.

Q. I wish you would tell the jury in your own way how you came to sign that or authorize that to be signed.

MR. FULTON: He says he didn't sign it.

Q. How did you come to authorize this to be signed?

COURT: He testified a while ago somebody else signed it at his request.

Q. Tell about that time with Mr. Hedgpeth.

A. I got that letter, that I am going to tell you, and I took it down to the stage barn and Mr. Hedgpeth was there and I had him read it and he said "That is all right, sign it," and I said, "if it is all right I will sign it," and I did, and I took it and put it in my pocket and I didn't give it to Mr. Sheridan until next morning and I met him at the bank, on the sidewalk outside, and he read it and went on in the bank and that is all there was to it.

Q. Now, this statement says that you had authorized him to loan \$230 to Mr. Agee; had you given him that authorization?

A. No, sir, I did not. Not at that time. I had Mr. Hedgpeth sign it.

Q. But was the authorization you gave him to loan the \$500 the only authorization you ever gave him?

A. Yes, sir, that is all I ever gave Mr. Sheridan to take——

MR. FULTON: Now, Mr. Reames, I don't want to interrupt by objection, but I object to your saying

(Testimony of David Hull.)

“was that the only authorization?” Now, you can ask him if he had any other conversation about it, because authorization is a conclusion to be drawn.

Q. Did you ever have any other talk with him, Mr. Hull?

A. No, sir, I never did.

Q. About telling him to loan your money?

A. I never did.

### CROSS EXAMINATION.

By MR. FULTON.

Witness continuing: I had been in the bank and I said, “How about loaning about \$500 of my money to a good man?” and Mr. Sheridan said, “Ain’t I a good man?” And I said, “Yes, sir.” I have no idea when that was. I don’t know how much I did have in the bank at that time. I knew then that he took \$500. I didn’t know exactly at what time, for he didn’t say, but I expected him to. I don’t know what year this was in. I suppose he took \$500. I told him to take it. I never got no note. I suppose the note is in the bank. I had a bank book. (Produces bank book).

Q. By MR. FULTON: Well, I see here on March 22, 1906, is a debit charge to you; this shows that it was taken out of your account, \$512.50; do you think that was the amount?

A. I have an idea; I could not swear to it. I had a deposit in the bank. I know that.

(Testimony of David Hull.)

Q. Well, here is a note dated March 2, \$512.50. Did you get that note? (Government's Exhibit 2.)

A. I got that in the lawyer's hands, the note left in the bank; I didn't know the note was there; I know I put five hundred——

Q. You didn't put this \$512.50 in the lawyer's hands, did you?

A. I put all my notes in his hands; all the notes I had. He got them out of the bank. This was about a year ago, a little over, that I put them in his hands. I did this so that the lawyer would collect the money for me from Mr. Sheridan. I never did authorize the \$800 loan. Mr. John Sheridan paid \$460 on the note. I have this \$800 note in my lawyer's hands. The note is signed John Sheridan, by Tom Sheridan. Shows that it was signed the name John Sheridan by Tom Sheridan. There has been \$400 paid on the principal and \$160 on the interest. This was paid about four or five months ago.

Q. By MR. FULTON: And since Eddy has it, did John Sheridan pay some—has he paid this \$400 since Mr. Eddy has it?

A. Yes, sir.

Q. And he had paid the interest before?

A. Oh, yes, yes, paid the interest before.

Q. What was that \$160 besides you mentioned that was paid?

A. That paid the interest.

Q. That was on the interest?

A. Yes.

(Testimony of David Hull.)

Witness continuing: I never got my bank book straightened out. I put money in the bank, took the book along and the man entered—would put down what I drew out and what I put in. They fixed it up one time, I remember. They had Mr. Harry Stapleton, the bookkeeper, fix it up.

Q. Now, later on, when the bank examiner was there, you say that you received from the bank examiner a letter, which I now hand you, and ask you if it is the one to which you referred.

A. I don't know much about that, but——

Q. Do you—look at the signature there, David Hull, and see if you recognize that as the one which you say you had signed for you?

A. Yes, sir, that is the one Mr. Hedgpeth signed.

Q. You recognize that?

A. Yes, sir, the very one.

Q. Who was it signed that for you?

A. Mr. Hedgpeth, Al Hedgpeth.

Q. Mr. Hedgpeth wrote your name, by your direction, to that?

A. Yes, sir.

Q. You went with this after you received this from the post office, as I understand, you went down to the livery stable?

A. Yes, sir.

Q. Where Mr. Hedgpeth was?

A. Yes, sir.

Q. You showed it to him?

A. Yes, sir.

(Testimony of David Hull.)

Q. And he read it to you. Well, how long did you talk to Mr. Hedgpeth about it?

A. Oh, ten or fifteen minutes, I guess, maybe; I never timed myself to see the time it was.

Q. He read the whole letter to you, did he?

A. Yes, sir.

Q. I will read this and see if it sounds to you just the same as it was read to you. (Reading): This is "Roseburg, Oregon, June 20, 1911. Mr. David Hull, Roseburg, Oregon, Dear Sir: The records of this bank showed at a recent examination that certain charges had been made in your account by President Sheridan; in other words, part of your deposit had been withdrawn and loaned by him. Mr. Sheridan states that you authorized him to draw these funds and invest them for you. If this is so you will kindly sign the certificate at the bottom of this letter and return in the enclosed addressed envelope. Mr. Sheridan informs me he has withdrawn the following sums, which he loaned to parties mentioned below: \$230 loaned to B. C. Agee. Very respectfully, Goodheart." Some initial there I don't understand. "National Bank Examiner." You understand that? That had nothing to do with this \$512?

A. No, no, had nothing to do.

Q. This is the \$230 mentioned in the indictment. Now, right below there is this about, which I read, and this is the one which you had him sign. "I hereby certify that any sums withdrawn by Mr. T. R. Sheridan from my balance on deposit with the First National Bank of Roseburg, Oregon, were duly authorized by

(Testimony of David Hull.)

me, and the First National Bank is relieved from all liability relative to the same." Now, you understand that when I read it?

A. Yes, sir.

Q. You understand that it said any sums withdrawn by Mr. Sheridan from your account was by your authority? You understand that is what it says? You understood that when it was read to you by this gentleman to whom you showed it? Didn't you? You understood it there?

A. He told me that would be all right.

Q. I say you understood?

A. Certainly.

Q. What it said, just as you understand it now?

JUROR: Did he read the letter to you?

A. Yes, sir, he did.

JUROR: Read it over to you.

A. Yes, sir, he did.

JUROR: Read the whole thing over to you?

A. Yes.

Q. He read it just as I am reading it now?

A. Yes, sir.

Q. And you understood it then as you understand it now?

A. Of course.

Q. Is that correct?

A. That is right.

Q. That is right—and then you told him to sign it—sign your name to it?

(Testimony of David Hull.)

A. Yes, sir.

The defendant offered and there was received in evidence, marked Defendant's Exhibit No. 1, a photographic copy of the letter of the National Bank Examiner, with the release clause attached.

Q. By MR. FULTON: Now, I find in looking over this little bank book of yours that under date of December 23, 1907, it shows that there was withdrawn from your account and charged to your account, \$800; did you notice that at the time you got your account?

A. No.

Q. You did not?

MR. FULTON: Now, at this time, Your Honor, as respects that \$800 I move to withdraw from the jury all testimony that has been given concerning it, because it seems now that it has no relation to the matters charged in the indictment at all. At the time it was offered here I probably misunderstood Mr. Reames, but I did get the understanding that the one with the \$400 balance on the 4th day of April, is it, or March——

MR. REAMES: March.

MR. FULTON: —was the one which he said related to the indictment.

MR. REAMES: Now, the Agee one is the one which I said related to the indictment.

MR. FULTON: The one charged in the indictment, Mr. Reames, is this \$230?

MR. REAMES: \$230 to B. C. Agee.

(Testimony of David Hull.)

MR. FULTON: Yes, B. C. Agee, \$230. It seems now clear enough that the \$800 had nothing whatever to do with the charge in the indictment. I move to strike out the testimony relative to that.

MR. REAMES: It has this to do with it, if the Court please. The Government has proved that whatever the authority of the defendant was to loan any part or portion of the depositor's money was limited to the loaning of \$500 to a good man, and the defendant asked him if he was a good man and he said yes. Now, he completely took up that authority and exercised all his rights under it when he loaned \$512.50 to himself on the 2nd day of March, 1906, and gave his note for it, which note still remains unpaid. He had the authority to loan that money—assuming that he had the authority to loan that money, although it might well be contended that the rate of interest had not been agreed on, but he went ahead and acted on it. Now, the depositor gets the note for the first time several years later, when he gets it from an attorney who goes to the bank and gets it. Now, under that assumed authority the defendant Sheridan takes \$800 more, which he loans to his brother in exactly the same manner, and then without any authority at all, as we contend, loans \$230 to Agee. Now, in view of the fact that we have proven what the authority was, and all that it was, and the witness says that is all the authority he ever gave him, why, certainly we are entitled to say that that authority had been all taken up and that he had no more authority to loan any more of these other sums, and I will say to Your Honor that we will sup-

(Testimony of David Hull.)

plement that by the books, by showing the condition of the Agee account and the condition of the John Sheridan account at the time these other loans were made.

COURT: Of course this \$800 transaction is not competent to show authority or want of authority for these other transactions set forth in the indictment. It may be competent on the question of the fraudulent intent, but the question as to whether or not he had authority on one occasion can be no evidence as to whether he had or had not authority on another occasion.

MR. REAMES: That question will arise a good many times on the trial. I believe if I could make my position clear in the matter—my position is this: Assuming that on the 22nd day of March, 1906, the defendant was authorized to loan \$512.30 to himself. Now, then, the defense could contend that that authority would continue until it was revoked, and until such time as the authority was expressly revoked then Sheridan would have the authority to loan \$512.50 to any good man or to Sheridan himself. Now, on the day, or about the same time he uses up this authority. Then if he had the authority he had no further authority after that. Now, then, going a step farther, with the record, Your Honor, in that shape, he loans an additional \$800 to his brother. Now, I contend that we are entitled to introduce that, not only for the purpose of showing the intent, but also for the purpose of showing that the authority that the defendant had had all been used up and more than used up before the \$230 transaction. Now, again——

(Testimony of David Hull.)

COURT: Of course if the authority was limited to the first transaction the fact that he made another loan afterwards would neither tend to prove or disprove authority.

MR. REAMES: If you will just bear with me one minute farther on the same point. Now, the witness says that he understood what that statement meant when he signed it, and yet he also testified that he did not know anything about the \$800 loan, at the time that he signed it. Now, of course, the law is well settled, and I don't think it will be seriously disputed that a man cannot ratify something he doesn't know anything about. The depositor could not ratify the loan to John Sheridan, or the loan to Agee, if he didn't know anything about them.

COURT: He could not ratify it, anyhow, so far as these criminal charges are concerned.

MR. FULTON: The point I make, or care to make, is this, Your Honor. They charge here in this indictment that he abstracted this \$230 and converted to the use of himself and Agee. Now they offer evidence respecting this \$800. I don't think it is one of these cases, Your Honor, and I do not think these are circumstances that come within the purview of the rule which allows you to show other like acts for the purpose of charging the party with a guilty knowledge, we will say. It does not seem to me that it rests on the same principle, as, for instance, a false entry in a book, in a bank book, account; now, there is an act of the party.

(Testimony of David Hull.)

You show the act of the party himself, which must necessarily have been wrong, because it is a false entry, he enters a note that does not exist at all, and that would tend to show a course, a method, a system, all of which was fraudulent and would point to and indicate guilty knowledge and guilty purpose and guilty intention. But here is a matter that is a matter purely of dispute between the parties. It is conceded that he had authority for one appropriation and then it is charged in the indictment he didn't have authority for another particular one. All right. That I concede is a matter to be litigated, a matter to be determined on the testimony. And now they seek to bring in another matter that is not mentioned in the indictment, that depends entirely upon the controversy between the parties. It is bringing in an independent case which cannot, except as established by the—purely by the evidence of the parties cannot tend to show guilty knowledge or good faith—cannot tend to show anything of the kind; because it is a separate transaction between the parties and depends entirely upon the testimony of those parties. He says he didn't have authority, the other man will say that he did have authority. He admits that he ratified it at one time, admits that he did, so far as there could be a ratification, and after all, how can that be said to indicate guilty knowledge or corrupt intent or fraud, where it is a separate transaction growing out of separate relations, or rather, or separate arrangements—necessarily growing out of separate arrangements, if any at all, and rests necessarily in the conflict of testimony in dispute

(Testimony of David Hull.)

between the parties. It is not like the bankrupt or like the counterfeit case, for instance, which is about the best illustration we have of other incidents to show guilty knowledge. A man is found with a forged note, or he is found with counterfeit in his possession, or passing it. Now, the mere fact that he passed a counterfeit bill at one time might or might not be persuasive evidence of his guilt, but the fact that he is passing counterfeit every day, or that he has passed several counterfeit bills or counterfeit coins, would increasingly show—with increasing ratio would tend to show his guilt—guilty knowledge; but that is not true in a case of this kind, where it is purely a matter of separate transactions between the parties. Now, it all depends on what the agreement between the parties was, whether or not Mr. Sheridan had a right to take that money and use it for himself or loan it to others; all upon the agreement. Proving that he didn't have an agreement in one case I don't think tends to show that he had no agreement in the other. Now, he concedes he had an agreement with him as to the \$512, had an agreement with him in regard to that. Now, that don't necessarily authorize him, but the other may be implied; he could infer that he had and it is purely a question as to what the real authorization was and it is not proven that he used the money at all. It is not proved that he had the authority, it is not proved that he didn't have the authority, or the fact that he used the money. Whether he did depends upon what the parties said. Now, he says the authority only went to the \$500, we say the authority went to the whole, but

(Testimony of David Hull.)

that is a matter of dispute between the parties, of course. The fact that he used it for another transaction, got \$800, does not tend to prove one thing or another, because it all rests upon what the agreement between the parties was, and that does not tend to prove or disprove the agreement between the parties; at least I can't see that it does. If our statement is correct he had a right to it; if his statement was correct it was limited to a certain one, and it all goes back to what the real agreement was between the parties, and his using it for this other only tends to complicate the situation, and I think the testimony ought to be confined to the charge in the indictment, as to whether or not that was in excess of his authority. Showing that he had exceeded his authority in some other matter, even if he did, does not seem to me would tend to show fraud, but it all rests, after all, upon what the agreement was. He limits it to \$512, we say it included the whole. And I don't think that they show guilty knowledge or they show fraudulent intent by showing this \$800, which is not mentioned at all in the indictment, and which it seems to me ought not to be put in.

COURT: As I stated a while ago, I am satisfied it is not competent for the purpose of showing authority or the want of authority, but I am satisfied that this belongs to that class of cases where evidence of similar transactions is competent on the question of intent. Suppose a reputable banker should sign the name of a depositor to one small check, a jury would be reluctant to find there was fraudulent intent there, even though

(Testimony of David Hull.)

there was no authority, they would attribute it to mistake or something else, but the checks might be so numerous or the checks might be so large that the inference would be otherwise. Of course, the weight of the testimony would be for the jury, and I will say to the jury now that it is no question of the authority or want of authority, that these transactions must depend upon the count relating to them. The motion is denied.

MR. FULTON: I will save an exception to the overruling of the motion.

Q. I think you, Mr. Hull, have said—you produced this and I understood you to say this is your bank book?

A. Yes, sir.

Q. This is your bank book?

A. Yes, sir.

Q. With your bank?

A. With my bank.

Q. Covering the periods mentioned in here?

A. Yes.

MR. FULTON: We offer that, Your Honor, in evidence.

MR. REAMES: We have no objection.

COURT: Admitted.

Marked Defendant's Exhibit 2.

Q. Can you tell us how often you received that book from the bank—how many times?

A. No, sir, I cannot tell you; I had it in my possession all the time.

(Testimony of David Hull.)

Q. It was always in your possession, but you would go to the bank sometimes to have it written up?

A. I didn't have it written up but once, I guess, to my knowledge.

Q. When was that?

A. I don't remember when it was. I don't remember about when it was, having it fixed up.

Q. I see it was balanced, as we call it—you understand what it means, the balancing a book, don't you? This line is drawn across here and the footing is written and that amount there indicates the amount there is in that column; both the figures above and these over here indicate the amount, the sum of the figures here, the difference between those two sums is the amount you have in the bank, or, on the other hand, the balance you owe the bank, whatever it may be.

A. Yes.

Q. Now every time these are balanced, that was, the book is written up?

A. Yes.

Q. Now, you would hold the book in your possession all the time?

A. Oh, yes.

Q. And the bank could not get it unless you took it to that, so every time it was balanced you must have taken it to the bank?

A. I would not leave the book in the bank long; just long enough to have it written up. I left it there to be balanced. Everybody take the book in every once in a while and get the book balanced up. I wanted to

(Testimony of David Hull.)

see what the state of my account was in the bank. When the book would be balanced they sent it back to me with the checks in a bundle and I would get the book back with all of the checks that had been drawn against my account since the last time it was balanced, but I never did go over my checks to see what they were when I got them back. I did not have anybody go over the checks for me. My lawyer, Mr. Eddy, found the check for \$230 and the check for \$800 among the bundle of checks that had been sent back when the book had been balanced. This was a little more than a year ago.

Q. By JUROR: That gentleman that read that to you—you understand it—that read that thing to you—you went wholly on what he said; suppose he had said, “it is no good, don’t sign it,” would you have signed it?

A. No, certainly, I would not have signed it.

## RE-DIRECT EXAMINATION.

By MR. REAMES:

When my book was handed back to me after it had been balanced, in January, 1911, I did not know that my account was in overdraft \$263. I do not know what an overdraft is. I never did draw out any more money than I had in the bank. I never to my knowledge drew out any more money than I had in the bank. I took my cancelled checks and my book statement, the bank statement, to my lawyer at Roseburg, Mr. Eddy, about a year ago. And prior to that time I did not know any-

(Testimony of C. W. Hedgpeth.)

thing about the memorandum check, by which the money was drawn out for Mr. Agee. At the time I had Mr. Hedgpeth sign the release I did not know that Mr. Sheridan had already taken out \$230 from my account. I thought it was authority for him to take it. Yes, that much.

Q. By MR. REAMES: Now, that statement that you signed said that you had previously authorized him to take that money; now, in truth and in fact, had you given him that authority to loan that money to Mr. Agee?

A. No, sir.

## C. W. HEDGPETH

A witness called on behalf of the Government, testified as follows:

## DIRECT EXAMINATION BY MR. REAMES.

I live at Roseburg and have lived there approximately twenty years. I have known David Hull fifteen years. I am working for the Roseburg-Myrtle Point Stage Company. I signed the name of David Hull to the release (defendant's exhibit 1). The circumstances have been pretty well stated by Mr. Hull. The document was brought—I supposed from the bank, at the time he brought it, he asked me to read it for him and I did so, and he asked me if I thought it was all right and the meaning of it, and I gave him my interpretation of

(Testimony of C. W. Hedgpeth.)

the meaning of it, that it was a request from the bank to allow Mr. Agee to have \$230 of his money, then on deposit in the bank, and he said that was all right, to sign it, and I signed his name.

#### CROSS EXAMINATION BY MR. FULTON:

Q. You say you read that to him?

A. Yes, sir.

Q. This says, "I hereby certify that any sums withdrawn—withdrawn by Mr. T. R. Sheridan from my balance on deposit with the First National Bank of Roseburg, Oregon, were duly authorized by me, and the First National Bank is relieved from all liability relative to the same." Did you read that to him?

A. I don't know whether I did or not.

Q. Well, what did you sign? Didn't you read that where you signed your name?

A. It is my impression so.

Q. Just answer my question. I am not asking for your impression. I am asking you if you read that note there to which you signed his name?

A. I suppose I did, but I have no recollection of that part of it.

Q. Well, where did you get any recollection as to the authorization at all?

A. The request to let Mr. Agee have \$230 of Mr. Hull's money.

Q. Do you testify now that there was a request in there that he let Mr. Agee have \$230 of his money?

(Testimony of S. A. Sanford.)

A. That was my interpretation of it.

Witness continuing: I understand this release now when I read it. My recollection was that it was a request for leave to make a loan, but that is not my interpretation of it now. It is very simple and easy to understand, yes.

S. A. SANFORD,

A witness called on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. REAMES:

I live near Roseburg and am a rancher. I am the trustee of the First National Bank of Roseburg. I went to Roseburg in 1901 and entered the employ of the bank at that time in the capacity of bookkeeper, serving as bookkeeper for five years and was then elected cashier. Since my first work for the bank I have worked for it continuously until it went into liquidation and then I continued to serve as its trustee. After the consolidation of the two banks I retained the books and records of the First National Bank, as its trustee.

By MR. FULTON: We will admit the records of the bank. We will admit that is the records of the meetings. What purpose do you offer it for?

MR. REAMES: The purpose of offering the book is to show who the officers of the bank were, when elected and how they served, the duties of the officers as

(Testimony of S. A. Sanford.)

defined by the by-laws of the bank and the manner in which the business of the bank was conducted, and to prove that nothing appears in the minute book authorizing the president of the bank to make any of these loans that the Government will offer proof of.

**MR. FULTON:** I don't at the present time see that it is material what the duties of any officer of the bank, excepting the president, were. It may be that it will become material but I would want to know on what points you claim that was material, otherwise I have no objection to it going in for the purposes you mention. So far as Mr. Sheridan is concerned, we admit he was president of the bank. If you want to show that, we don't dispute that during all of these transactions he was president of the bank.

Minute Book marked Government's Exhibit 5.

Witness continuing: Mr. Thomas R. Sheridan was president of the bank from 1891 up to the present time. In the years 1910 and 1911 the directors of the bank were Thomas R. Sheridan, J. C. Sheridan, myself, Warren Reed, Morris Weber; Thomas R. Sheridan is the defendant in this case and J. C. Sheridan was a brother. It was the duty of J. C. Sheridan to write up pass books, post the general ledger and take charge of them. My duties as cashier was to keep the books, reconcile statements, clerical duties and to look after the accounts and books. Warren Reed was a director; he was a merchant and lived at Gardiner, which was located about 60 miles from Roseburg on the Umpqua River. Morris Weber

(Testimony of S. A. Sanford.)

was a director; he was a farmer. Mr. Sheridan and myself ran the bank. We all had our duties to perform in there. I didn't have charge of the loans; I never assumed any authority in the loans. He made those himself. I might have made some small loans, but no large ones. T. R. Sheridan did have charge of making the loans for the bank. The book you show me is the individual ledger of the First National Bank of Roseburg, Oregon, for the year 1909, and shows the individual depositors of the bank and the check accounts. It shows the deposits that are made to the credit of the individual depositor and the checks drawn against his account. It is balanced every day. This is one of the books kept under my direction as cashier.

MR. REAMES: The Government offers the individual ledger in evidence. Do you want to require any further proof of it?

MR. FULTON: No.

COURT: What parts of it?

MR. REAMES: I would like to draw from all of it.

MR. FULTON: That is the ledger, you need not make any further proof than that, but of course we don't want the whole of that in evidence, because there is so much of it utterly immaterial, supposing the case went up.

MR. REAMES: I would not want that, of course, but I would like to have it in to this extent, that there

(Testimony of S. A. Sanford.)

are a great many depositors' accounts that will be material here to which I would like to direct his attention.

COURT: It will be considered in evidence for that purpose.

MR. FULTON: Reserving our right to object to any particular account.

COURT: Oh, yes.

Witness continuing: Government's Exhibit No. 4 for identification is a memorandum check signed by and in the handwriting of T. R. Sheridan.

MR. REAMES: The Government will offer the memorandum check in evidence and ask to have it received and marked as Government's Exhibit 4.

Marked Government's Exhibit 4.

MR. FULTON: We have no objection, we admit it.

COURT: You admit the signature to all the memoranda submitted?

MR. FULTON: Yes, all that have been handed in here and marked for identification, they are his signatures.

COURT: That will dispense with further proof of their execution then.

Q. I hand you herewith a promissory note of date March 4, 1911, for \$230, payable on demand, to David Hull, purporting to have been signed B. C. Agee by

(Testimony of S. A. Sanford.)

T. R. S. (Addressing Mr. Fulton) Is it admitted that that is in the handwriting of the defendant?

MR. FULTON: Mr. Sheridan; yes, sir.

MR. REAMES: All right, sir.

COURT: Admitted.

MR. REAMES: The Government asks to have it marked as Government's Exhibit 6.

Marked Government's Exhibit 6.

Q. I hand you another instrument and ask you to examine it and tell the jury what it is.

A. Deposit slip, deposited with the First National Bank to the account of B. C. Agee, Roseburg, Oregon. The date is 3/4/11.

Q. The date is March 4, 1911?

A. Itemized down here, "Hull, \$230."

Q. And this is in Sheridan's handwriting?

A. Yes, sir.

Q. That is T. R. Sheridan?

A. T. R. Sheridan.

MR. REAMES: The Government will offer the deposit slip in evidence and ask to have it received and marked as Government's Exhibit 7.

COURT: Admitted.

Marked Government's Exhibit 7.

Q. Now, turn to page 600 of that individual ledger and look at the account of David Hull under date of

(Testimony of S. A. Sanford.)

March 11, 1911, and tell the jury what entry appears there. March 7.

A. March 7, 1911?

Q. March 7, yes.

MR. FULTON: Do you want to show in these accounts that the \$230 went out of Mr. Hull's account and was carried into Mr. Agee's?

MR. REAMES: Yes.

MR. FULTON: We admit that.

MR. REAMES: I want to show something else about it.

MR. FULTON: I thought I could shorten it.

MR. REAMES: You can on every other one, but on this one there is something I could not show on admission.

Q. What is the date, March 7, 1911?

A. March 7, 1911.

Q. What is the entry?

A. There is a charge against his account for \$230.

Q. Does that mean \$230 was taken from Mr. Hull's account at that time?

A. Yes, sir.

Q. Now, look at page 5 of the individual ledger and tell the jury if you can tell what became of that money, now, look under the date of March, is this March 4?

A. March 4.

Q. March 4, 1911. What entry do you find there?

(Testimony of S. A. Sanford.)

A. Find B. C. Agee was credited with \$230. The item appearing there is the name of David Hull, \$230.

Q. Now, then, prior to the time of that credit of \$230 in the account of Mr. B. C. Agee, what was the condition of Mr. Agee's account?

MR. FULTON: What is the condition of Mr. Agee's account?

MR. REAMES: Yes, sir.

MR. FULTON: What the materiality of that is I cannot see. Your Honor, I object to it at the present time.

MR. REAMES: I think it is material, if the Court please not only on this, but on a number of other items that will come in. I cannot very well tell the Court what the reason is without telling it to the jury, but if you would like to have me explain it, I could, but——

MR. FULTON: I don't know, of course, to what you want to testify.

MR. REAMES: I don't want to testify, but by telling you and telling the Court what I want it for, I would have to tell the jury what it is, that is the only thing.

MR. FULTON: Well, you know what is proper, so go ahead and make the statement to the jury.

COURT: Answer the question.

MR. REAMES: The purpose of this, as in a number of other items, will be to show that on that date

(Testimony of S. A. Sanford.)

of the credit the account of Mr. B. C. Agee was in overdraft.

MR. FULTON: I supposed so; I supposed that is what the idea was.

MR. REAMES: And the Government will supplement that with proof that Mr. Agee and Mr. Sheridan were partners, and the Government will therefore contend that he is at least outside the limit of his authority when he made any such a loan as that. In other words, it is a circumstance to take into consideration.

COURT: You are contending here that the defendant was loaning the money of the bank, or that he was drawing it out without authority?

MR. REAMES: I am contending that he was abstracting it without any authority at all.

COURT: What difference does it make what he did with the money?

MR. REAMES: Just as Your Honor indicated a few moments ago, that if a banker would take a small amount of money of his depositor on a deposit slip and take the money, that a jury will be very loath to say that he did it with any wrongful intent or any intent to defraud, but as Your Honor indicated, that if that was shown to be a general thing, a large number of transactions, that it might be introduced for the purpose of showing the intent and that it could not possibly be a mistake. Now then, when we have a condition where the account of a depositor is actually in overdraft I

(Testimony of S. A. Sanford.)

think it is material for us to show the purpose of that and the reason that he took the money was to take the account of his partner out of overdraft into a deposit, and we will supplement that by showing that Mr. Sheridan had an interest in that transaction, because the indictment says that he did it not only for the use and benefit of Mr. Agee, but he also did it for the use and benefit of himself.

**MR. FULTON:** Show that he had the interest, I will make no objection to that. I have some—a portion of that is true, I am not quite sure, that he was in some things associated with Mr. Agee, but whether their account was in overdraft or not does not in any manner that I can conceive of tend to throw any light upon whether or not he had the authority to take the money. I assume that people don't borrow money unless they need it and generally when a man has money on deposit and to his own credit he doesn't borrow, and likely that his account is in arrears when he borrows, as a rule, but when that is admitted as tending to show that, it dignifies it with being testimony of that character as tending to show that sort of thing, which it doesn't.

**COURT:** I know a bank examiner caught two of the wealthiest men in Yakima with overdrafts of \$750,000 in banks of Yakima, which doesn't prove very much.

**MR. REAMES:** That is true, in a condition, as Your Honor says, it seems to me it doesn't show anything.

(Testimony of S. A. Sanford.)

COURT: Of course you would have to go and show his solvency and insolvency. Of course, if there was an overdraft it would not prove anything except his financial condition.

MR. FULTON: I want to make this clear if I can, as my position: He is not to be held liable for any unwise investment of the money or use of the money. If he had a right to take the money, because he didn't wisely invest it or wisely loan it, is immaterial, the question is, did he have authority directly or implied, to take that and use it, either for himself, or loan it?

COURT: If that were the only issue in the case I would sustain your objection without hesitation, but such a wide field is thrown open on the other question and it is so hard to limit testimony to its proper sphere. I will permit him to answer the question, but, as I say, it doesn't prove anything, one way or the other.

MR. FULTON: I save an exception.

COURT: You may state what the condition of his account was.

Q. What was the condition of his account on that day, immediately prior to the credit?

A. The account was overdraft \$229.67.

Q. Now, turn to the individual ledger at page 600; is that the account of David Hull?

A. Yes, sir.

Q. Now, I hand you herewith a memorandum check, Government's Exhibit No. 3, for identification,

(Testimony of S. A. Sanford.)

and will ask you to examine the same and say in whose handwriting that is?

A. The handwriting of Mr. Sheridan.

MR. FULTON: That is that one regarding the \$800 transaction?

MR. REAMES: That is the J. T. Sheridan transaction.

MR. FULTON: On the ground we base our objection, we object to that and wish to save an exception.

COURT: Yes.

MR. REAMES: The Government will offer in evidence the Government's Exhibit No. 3 for identification and will ask to have it marked as Government's Exhibit 3. This is the memorandum check.

COURT: If agreeable to counsel I am willing that exceptions should be reserved to all rulings.

MR. FULTON: Where objections may be——

COURT: Yes, sir.

MR. FULTON: That is satisfactory.

Memorandum check marked Government's Exhibit 3.

Q. Now, look under date of Dec. 23, 1909, and read the item that appears there.

A. December 23?

Q. 1909.

A. 1909. David Hull's account was charged there with \$800.

(Testimony of S. A. Sanford.)

Q. With \$800. Now, what did that charge of \$800 do to David Hull's account?

A. Overdrew his account I notice.

Q. It did what?

A. Overdrew his account.

MR. REAMES: I asked him what that charge of \$800 of Dec. 23, 1909, did to David Hull's account.

MR. FULTON: We wish the same objection to all of that.

Q. What did it do to that?

A. Overdrew it.

Q. Put it in overdraft?

A. Yes sir.

Q. How much did it put David Hull's account in overdraft?

A. \$263.50.

Q. How, are you able to trace where that \$800 went from the book there?

COURT: Is there any dispute but what it went into this \$800 note referred to here, Senator?

MR. FULTON: I think not. Is there an \$800 note? There is an \$800 note?

COURT: You referred to it.

MR. FULTON: Oh, yes. It is my understanding that there is no dispute about it, Your Honor.

(Testimony of Mrs. Laura M. Verrell.)

**MRS. LAURA M. VERRELL,**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live at Edenbower in Douglas County, Oregon, situated two miles west of Roseburg. I have lived there continuously for 12 years. Am 67 years old and have just recovered from a spell of sickness. I know Mr. T. R. Sheridan and have known him personally eight or ten years. I have been a depositor in the First National Bank of Roseburg.

A letter signed by the defendant, written to the witness, under date of April 6, 1911, was introduced and read in evidence. Government Exhibit Number 8.

Witness continuing: The mortgage mentioned in the letter was the Crouch mortgage, due me from Mr. Crouch, for \$4,000. When that money was loaned to Mr. Crouch, my son, Charles C. Verrell, attended to the business.

A memorandum check, of date April 15, 1911, upon the First National Bank of Roseburg, against the account of Laura M. Verrell, and in the sum of \$5,000, admitted by the defense to have been signed by the defendant and in his handwriting, and stated by Mr. Reames to form the basis of Count No. 4 of the indictment, was offered and received in evidence and marked Government's Exhibit No. 9.

(Testimony of Mrs. Laura M. Verrell.)

Witness continuing: Mr. Sheridan handed me this memorandum check. I did not sign it.

A promissory note, of date April 15, 1911, for the sum of \$5,000, due one year after date, in favor of the witness, admitted by the defendant to be in the handwriting of the defendant, was received in evidence and marked Government's Exhibit No. 10.

Witness continuing: This note I never had in my possession and I never saw it until I saw it before the Grand Jury at Roseburg, Oregon, a year ago last November.

Q. BY MR. REAMES: Now, Mrs. Verrell, I wish you would just go ahead and in your own way tell the jury all the transaction that you had with Mr. Sheridan relative to the loaning of your money for you.

A. He asked me if I wanted to loan that money that was paid in on the mortgage; he said he would get a good loan for me and I supposed it was to be the bank would loan the money. There was nothing said about it, that the bank was to loan that money, but he asked, not individually, but as President of the bank, a representative of the bank; I supposed that the bank was the one that was loaning—

COURT: Just state what was said.

A. Mr. Sheridan wanted to know if I wanted to loan it, and I said I didn't know, I was intending to put it into real estate, and he said I would better loan it, it would bring me more, and I didn't want to give him any answer at that time, I wanted to think it over,

(Testimony of Mrs. Laura M. Verrell.)

which I did, and he wanted to know at that time if I wanted to put any more with that \$4,000 and I told him I didn't know, that I would think it over, which I did, and I told him that I would put some more that time, but there was nothing said of how much to put with it, how much I would put with it, because at that time I expected to see him again before this loan was made.

Q. Did you ever authorize him to sign that memorandum—

MR. FULTON: Don't ask her that—

COURT: Objection sustained, she may state the conversation.

Q. Go ahead; have you told all the conversation?

A. That is all the conversation we had until he handed me the memorandum check; there was nothing said as to when the money was to be drawn from the bank or how.

Q. Go right ahead, Mrs. Verrell, and tell all your transaction.

A. When he handed me the memorandum check, I never saw a memorandum check before and I supposed that was to show the bank had loaned my money. I didn't know the difference, I never did any business along that line before, and I depended on him and had confidence in him that he would do what ought to be done—

MR. FULTON: Mrs. Verrell, please, we don't want to interrupt you, Mrs. Verrell, but you should

(Testimony of Mrs. Laura M. Verrell.)

confine your testimony to just stating what was said, not to what you don't know or what you think, just what was said.

A. He said my money was safe—safely invested, and I told him at that time that I didn't know as I ought to spare that much, and he said I could have it at any time by giving a short notice, so I let it go at that, and I supposed that my money was loaned by the bank.

MR. FULTON: Now, Mrs. Verrell—

A. I supposed my money was loaned by the bank and he was a representative of the bank—

MR. FULTON: I have to object to that.

COURT: The objection will be sustained; what she supposed is not evidence.

Q. Mrs. Verrell, did you at any time authorize him to take this money personally?

MR. FULTON: I object to that, that is the same question the Court has ruled on; state what was said.

COURT: Whether he was authorized is a mixed question of law and fact; it is a conclusion.

Q. I will ask this, did you ever tell him to take that money and loan it to himself?

MR. FULTON: That is leading.

A. No, I never did.

MR. FULTON: Let it go.

MR. REAMES: If the Court please, that question will arise—

COURT: The question has been answered.

(Testimony of Mrs. Laura M. Verrell.)

**MR. REAMES:** I want to be heard on that, if the Court please, and I don't want to unnecessarily take up the time of the Court. Now, as I understand, it is going to be incumbent upon me to establish that this money was taken in the manner and approximately the time named in the indictment, and that it was taken without authority of these people. Now, if it is, and if it is incumbent upon me to show that, then I contend that I should be permitted to ask each of these witnesses whether or not they authorized him or whether or not they told him that he could take this money for himself, and I think, if the Court please, that it is material for me to show that.

**COURT:** These witnesses can detail the conversations they had with Mr. Sheridan and it is for this jury to say whether he was authorized or not.

**MR. REAMES:** Yes, but the jury could not say, if the Court please, whether or not she ever told him to take the money and use it himself unless she testifies.

**COURT:** I say she can tell what she told him, but she cannot draw a conclusion as to whether or not that authorized him to do one thing or do another; that is for the jury. She can tell all that transpired between her and Mr. Sheridan.

**Q.** Did you ever at any time before the date of that memorandum check of date April 15, 1911, have any further talk with him about loaning your money to anybody, other than what you have detailed?

**A.** No.

(Testimony of Mrs. Laura M. Verrell.)

Q. Now, when did you first see that memorandum check, Mrs. Verrell?

A. Why, he handed it back to me in the bank.

Q. Do you remember about what time; this is the memorandum check, Government Exhibit 9, which is dated April 15, 1911?

A. Yes.

Witness continuing: I can't remember the date when he gave me that memorandum check; I remember I was in the bank and he handed me that check, and that is all that I can remember about it. No part or portion of the amount has ever been repaid to me. When the Crouch loan for \$4,000 had been made, prior to this transaction, I had signed the check myself and did not have to have any one to help me. I can read and write.

Q. Now, here is a letter dated June 20, 1911, written to you by a National Bank Examiner, Goodheart, purporting to be signed by you. I would like to have you look that over, Mrs. Verrell, and tell the jury whether or not you signed it, and if you did, the circumstances under which it was signed?

A. Yes, I signed that.

Q. Just go ahead now, in your own way, and tell the jury how you came to receive it and how you came to sign it.

A. Mr. Sheridan told me that I would receive that letter and when I received it to sign it and send it back to the bank examiner, which I did, but not before he saw the letter. He saw the letter, I took it to him after I had signed it, I signed that letter in my home and I

(Testimony of Mrs. Laura M. Verrell.)

took it to him and he looked at it and read it over and looked at it and he said it was all right and he put it in the envelope and sealed it himself, but that letter was misrepresented to me.

MR. FULTON: What?

A. That letter was misrepresented to me; there was no explanation made of it.

MR. FULTON: Mrs. Verrell, please don't make those statements; if you think there was anything said to you that was a misrepresentation, tell what was said; let us have what was said; just confine yourself to what was said.

A. That is all that was said.

Q. MR. FULTON: That is all that was said?

A. Excepting there had been some changes made in the bank and I was to sign the letter; that is all the conversation there was in regard to it.

Q. Now, Mrs. Verrell, can you tell us about when it was that Mr. Sheridan told you you would receive a letter from the Bank Examiner?

A. I cannot tell you just the exact date, but it was only a short time before I received it.

Q. What, if anything, did Mr. Sheridan tell you to do with the letter, in the event you received it?

A. He told me to sign it and send it to the Bank Examiner.

Q. Where were you when you received it?

A. At my home.

(Testimony of Mrs. Laura M. Verrell.)

Q. Was there any one there for you to counsel and advise with?

A. No.

Q. Did you counsel or advise with any one else except Mr. Sheridan?

A. I did not.

MR. FULTON: Immaterial, Your Honor, entirely immaterial; I object to it.

COURT: The question has been answered. I don't see the materiality of it.

Q. Well, where were you when you signed it, at your home or at the bank?

A. At my home.

Q. Now, tell the jury in your own way the circumstances under which you took it to the bank and to whom you delivered it.

A. I took it to the bank and showed it to Mr. Sheridan; he was at his desk, writing; I showed it to him and told him I had received the letter which he told me I would receive from the Examiner, and would like for him to look it over and see if it was all right before I sent it, which he did.

Q. Do you know whether or not the Examiner was at the bank at that time?

A. How?

Q. Do you know whether or not the Examiner was at the bank at that time?

A. No, I don't think he was.

Q. You didn't see him?

(Testimony of Mrs. Laura M. Verrell.)

A. No.

MR. REAMES: I think that is all.

### CROSS EXAMINATION.

Questions by Mr. Fulton:

You left the letter with Mr. Sheridan?

A. No, I didn't leave it with him, he looked it over and put it in the envelope himself and sealed it.

Q. And you took it and mailed it?

A. I mailed it.

Q. You mailed it?

A. Yes.

Q. Now, you received this letter through the post office?

A. I did.

Q. And it was delivered to you at your home?

A. Yes.

Q. Now, you read it over, of course, when you received it?

A. Yes, I suppose I did; yes, I read it.

Q. Read it over all by yourself?

A. Yes.

Q. Do you remember about what time of the day you received it?

A. I do not.

Q. But you do recall that you were by yourself?

A. Yes.

Q. And you sat down and read it over?

A. Yes.

(Testimony of Mrs. Laura M. Verrell.)

Q. Now, I suppose you read it pretty carefully, didn't you?

A. No, I didn't, not very.

Q. There was nobody there to disturb you?

A. No.

Q. Did you read it more than once?

A. No, I don't think so; I don't remember that I did.

Q. What say?

A. No, I don't remember that I read it but once.

Q. Well, you read it over to yourself so that you had no difficulty in understanding it?

A. Well, no, I can't tell you that I understood it.

Q. What?

A. I can't tell you that I understood that letter.

Q. Can't say that you understood it, Mrs. Verrell?

A. No.

Q. Well, there is nothing very difficult about it to understand. Let me read it to you, Mrs. Verrell, and see if you cannot understand. "Dear Madam:" After addressing you:

A. Yes.

Q. "The records of this bank showed at a recent examination that certain charges had been made in your account by President Sheridan." You can understand that some charges had been made in your account. "In other words, part of your deposit had been withdrawn and loaned by him. Mr. Sheridan states that you authorized him to withdraw these funds and invest them for you. (If this is so, kindly sign the certificate at

(Testimony of Mrs. Laura M. Verrell.)

the bottom of this letter and return in the enclosed addressed envelope." Now notice: "Mr. Sheridan informs me that he has withdrawn the following sums, which he has loaned to the parties mentioned below: \$5,000 loaned to T. R. Sheridan." Now, that is not difficult to understand, is it, Mrs. Verrell?

A. No.

Q. That says \$5,000 loaned to himself, T. R. Sheridan; you understood that, didn't you, when you read it?

A. I read it.

Q. You understood it, didn't you?

A. No, I don't know that I understood it.

Q. Oh, Mrs. Verrell, you could understand that?

A. Why should I understand that when I never loaned it to him? I never loaned him any money.

Q. I mean you could understand it when you read it, that Mr. Sheridan had reported to the Bank Examiner that \$5,000 of this money had been loaned to Mr. Sheridan by your authority. You understood that? Then we will read a little farther. That is signed by the Bank Examiner. And down below is this statement, which you signed: "I hereby certify that any sum withdrawn by Mr. T. R. Sheridan from my balance on deposit with the First National Bank of Roseburg, Oregon, were duly authorized by me." Now, you understand that, don't you?

A. Yes, sir.

Q. Now, when I read it, you understand it, don't you?

A. Yes, I understand it.

(Testimony of Mrs. Laura M. Verrell.)

Q. That is not difficult to understand at all, is it? Now, when you read it all by yourself you could understand it, couldn't you? Couldn't you?

A. I could not tell you; I can't answer that question.

Q. What?

A. I can't answer that question.

Q. You can tell us whether or not you understood it, surely?

A. I don't think I did understand it fully.

Q. You can understand what it meant by being authorized by you, that any moneys drawn from your account were authorized by you. You understand that, and up above there it was said that \$5,000 had been withdrawn. (Addressing Mr. Reames): Was this introduced in evidence?

MR. REAMES: No, I just questioned her about it?

MR. FULTON: I will offer it in evidence.

COURT: The copy will be admitted.

MR. FULTON: Yes, the same as the other.

Marked DEFENDANT'S EXHIBIT NO. 3.

Q. Now, Mrs. Verrell, you knew all the time that Mr. Sheridan had this money of yours, did you not?

A. I didn't know that he had it.

Q. Well, when this memorandum check was given to you, you understood that he had it, didn't you?

A. He never told me that he had the money.

(Testimony of Mrs. Laura M. Verrell.)

Q. When do you want us to understand that you first understood that he had your money?

A. I think—I cannot tell you just when I knew that; I didn't know for certain, I don't think, until I was called before the Grand Jury.

Q. When was that?

A. A year ago last November.

Q. A year ago last November. Now, I ask you to look at the letter which I hand you and tell me who wrote that letter?

A. I wrote it.

Q. Did you write that letter to Mr. Sheridan?

A. I did.

Q. And did you write it on the date—you will observe it bears date September 9, 1912.

A. Yes.

Q. Now, that was a long time before the grand jury met, wasn't it?

A. Yes.

Q. This letter reads as follows—

MR. REAMES: We have no objection.

MR. FULTON: We haven't offered it yet.

Q. This letter reads as follows: "Mr. T. R. Sheridan, 215 Cherry Street, San Francisco, California, Dear Sir: Will you please send me one year's interest on money loaned? Can you tell me when you will be in Roseburg? I wish to interview you personally in regard to business matters. Very respectfully, Laura M. Verrell." Now, there you were, writing to him; he was in San Francisco at that time?

(Testimony of Mrs. Laura M. Verrell.)

A. Yes.

Q. And you were writing to him to send you one year's interest on your money loaned; what money was that?

A. The money that I supposed the bank had loaned for me, that \$5,000 was a bank loan.

Q. Why were you writing to Mr. Sheridan in San Francisco?

A. He was the one doing the business and I supposed he was still doing the business. I didn't know.

Q. Why didn't you go to the bank?

A. Because I didn't suppose it was necessary to go to the bank; he was the one that had done all the business; he represented the bank.

Q. This was written in Edenbower; where is Edenbower?

A. Where I live, two miles from Roseburg.

Q. Practically a suburb of Roseburg?

A. Yes.

Q. And instead of going to the bank or any of the bank officials you wrote to Mr. Sheridan to send you the interest on your loan?

A. Well, he had loaned—he was the same as the bank; when I speak of Mr. Sheridan I speak of the bank; he was President of the bank.

Q. But you didn't think the bank was in San Francisco?

A. No, but he used to be back and forth all this while, and he was attending to this business for me.

(Testimony of Mrs. Laura M. Verrell.)

I didn't know it was necessary to go to any of the rest of the bank.

Q. If you had thought that the bank had loaned it, you wouldn't have gone to the bank?

A. No.

Q. Why didn't you say the money the bank had loaned? You say, "Will you please send me one year's interest on money loaned." That implies money loaned to him, doesn't it?

A. No, I don't think so? He wouldn't take it that way, or he ought not to.

MR. FULTON: We offer that letter in evidence.

COURT: Admitted.

Marked DEFENDANT'S EXHIBIT NO. 4.

Q. Now, Mrs. Verrell, when you went into the bank after you had signed this letter at your house, at your own home, you went and showed it to Mr. Sheridan first, did you?

A. Yes.

Q. You went into his bank and showed it to him?

A. Yes.

Q. Please speak a little louder?

A. I did.

Q. And you asked him if it was all right, is that it?

A. Yes.

Q. Just state what you did?

A. Yes, I asked him if it was right; I asked him if it was right because I wanted to know if it was right before I sent it.

(Testimony of W. A. Sanford.)

Q. You had read it over previously?

A. Yes.

Q. And signed it?

A. Yes.

Q. And he simply said what?

A. He said it was all right.

Q. That is all he said?

A. That is all he said that I remember of.

Q. Well, he didn't say to sign it?

A. He told me to sign it; he told me before I got the letter.

Q. I am asking you what he said at the bank?

COURT: It had already been signed, according to her testimony.

Q. That is the point, so he didn't say to sign it there; he simply said there, "It is all right"?

A. Yes, that is what he did.

## W. A. SANFORD

Recalled for the Government, testified as follows:

This is the individual depositors' book. I find an item on page 386 thereof, under date of April 15, 1911, in the account of Laura M. Verrell "loaned by T. R. S." The item shows that \$5,000 was debited her account on that day.

The defendant admitted that this \$5,000 was transferred to the account of Mr. Sheridan on the books.

(Testimony of W. J. Carlon.)

W. J. CARLON

A witness called on behalf of the Government, testified as follows:

Direct examination by MR. REAMES:

I live at Roseburg and have lived there since about 1873. I have known Thomas R. Sheridan fifty years and am 75 years old. I was a depositor of the First National Bank of Roseburg. In February, 1906, I had \$1750 on deposit there. About July 1st, 1911, I had a conversation with Mr. Sheridan, near the front of the Wells-Fargo office on Jackson Street, in Roseburg.

There was offered and admitted in evidence a memorandum check, admitted to be in the handwriting of the defendant, T. R. Sheridan, being of date April 7, 1911, upon the First National Bank of Roseburg, Oregon, against the account of W. J. Carlon, in the sum of \$1,000, and the same was marked as Government's Exhibit 11.

Witness continuing: I never signed it and never gave nobody else authority to sign it. Never authorized a man to sign a check for me in my life. Mr. Sheridan came to me on the street and says to me: "Bill don't you want me to loan that money for you?" He did not say he wanted to borrow it; he said: "Bill, don't you want me to loan that money for you?" I told him I didn't know; it would depend somewhat on what the security might be. He said that he would indorse the

(Testimony of W. J. Carlon.)

notes. Well, I told him I didn't know what his liabilities might be. He said: "You would not refuse to accept my endorsement, with all my volume of property, three dollars' worth for every dollar I owe?" I told him I might loan a part of it if the security suited me and before we separated, why, he spoke to me as if I would sign a release. I told him I didn't wish to sign no release in reference to the bank. He said nothing about these notes or this check or nothing at all. So after I had seen him—this man Goodheart—I never saw him at all, and would not know the man if I would meet him. I got a letter from Goodheart out of the post office and I didn't meet Sheridan again until July 8th in the Douglas County National Bank. July 8 I met him in the Douglas County National Bank and he presented these notes and he said: "Bill, I made notes for that money," and showed them up. I saw he had the date on them and I said "What?" and he said: "That is the date I got the money," and he said, "Don't say to them when you gave me permission." Well, I didn't say to them, because I never gave him permission to take a dollar of mine in my life. He had reference to the people in the bank, I suppose he had reference to that. This conversation was in the Douglas County National Bank in Roseburg and it was after the two banks had consolidated, and of course I supposed my money was transferred from there and knew nothing to the contrary until he presented this, because he had never said he had taken the money. Seven or eight or nine days after we had this conversation in front of the Wells

(Testimony of W. J. Carlon.)

Fargo & Company's Bank, it was; at the time I had the conversation with him at the bank I had already received the letter from the Bank Examiner. I got that out of the post office maybe that day and maybe the next after I had the first conversation with him. This note, of date April 7, 1911, for \$1,000, due six months after date, he gave me at that time, and gave me the memorandum checks in the same conversation.

There was offered and received in evidence promissory note of date April 7, 1911, for \$1,000, due six months after date, payable to W. J. Carlon, the defendant admitting that the note is in the handwriting of the defendant. The note was marked Government's Exhibit No. 12.

Witness continuing: I never signed the memorandum check of date April 27, 1911, for \$500. I never gave nobody else authority to sign it. Never had a man to sign a check for me, with my authority, in my life.

(There was offered and received in evidence memorandum check upon the account of W. J. Carlon at the First National Bank for \$500, of date April 27, 1911, the defendant admitting that the same is in the handwriting of the defendant. The memorandum check was marked Government's Exhibit No. 13. There was offered and received in evidence promissory note of date April 27, 1911, for \$500, due six months after date, signed T. R. Sheridan, the defendant admitting that the note is in the handwriting of the defendant. Note was marked Government's Exhibit No. 14.)

(Testimony of W. J. Carlon.)

Witness continuing: I received from Mr. Sheridan at that time at the bank the two memorandum checks and the two notes.

Witness continuing:

Q. Now, I hand you herewith what purports to be the original of a letter written to you under date of June 20, 1911, purporting to have been signed by Mr. Goodheart, National Bank Examiner, and will ask you to look at it and say whether or not you signed the release that is attached to that instrument, and if you did, tell the jury under what circumstances you signed it.

A. Yes, I signed that to that. I got this letter out of the post office and signed it after the time I received those notes.

Q. How much of that sum of \$1500 represented by those two memorandum checks and notes have been repaid to you—Mr. Carlon—how much of that money has been repaid to you?

A. I have got \$160. I wrote Mr. Sheridan the fall of 1912 to North Bend and he refused to answer me——

COURT: You have already answered the question.

A. —he received the letter for he showed it up in Roseburg since.

Q. Well, let's not go into that. Now, I want to call your attention to a conversation that you had with Mr. Sheridan at the Douglas National Bank at the time he handed you those notes and memorandum

(Testimony of W. J. Carlon.)

checks; did he ask you at that time if you had signed the release?

A. Yes, he spoke to me in regard to it and I told him I didn't get to sign it. He said it was all right; it was one of their forms to satisfy this man Goodheart, and I consented to that, I would sign the release, and he said: "Don't say to him when you gave me permission to have the money." Well, I didn't say to them because I never have given him permission to take a dollar of it in my life.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I don't know the date we had this first conversation but it was a few days previous to the 8th day of July, a few days would be six or eight or nine days, such a matter. It was about the 1st of July; it might have been the 28th, or 29th or 30th of June, but I think it was right around the 1st of July. Mr. Sheridan spoke to me if I didn't want him to loan that money for me; I told him I didn't know, depended somewhat on the security; he said he would indorse the notes; he mentioned to me before we parted, I said something in regard to the amount of interest, I told him I didn't care if it wasn't over 5 per cent if the security was good, provided we made arrangements for to make the loan; it was understood that he was going to loan this money to somebody else and that he was going to be security for it. We hadn't agreed on any loan at all—when we separated we hadn't agreed on

(Testimony of W. J. Carlon.)

the loan. I think probably, of course, if he loaned the money to somebody else he would endorse it as security, maybe it might possibly be good. Of course, until we found out who the other person was, until the notes was made—he hadn't made them—that is, he had made them I guess, but I didn't know nothing of it. He had taken that money, I suppose, of course, and held it for something like close on three months and had endorsed these checks for me, which is forgeries—and put them in—had them there undoubtedly, because they are there today.

Q. BY MR. FULTON: That is all argument and you know that, don't you, Mr. Carlon? You know that is all argument. Wait a minute; you have been instructed several times to answer questions, not to give your opinions. Now, you know the difference between answering a question and abusing a man, don't you?

A. Yes, I certainly do.

Witness continuing: It was sometime in July or the first of July, or the last of June, that I had the first talk with Mr. Sheridan about loaning my money. He came to me. I was standing not far from the front of the Wells Fargo & Co. office in Roseburg, on Jackson Street. I never went to his office in the bank to ask him to loan my money or take it and use it himself. I know Mr. Gardner; I did not in the spring of 1911, in the back room of the old First National Bank at Roseburg, in the presence of Mr. Gardner, say to Mr. Sheridan that I wanted him to take my money and use

(Testimony of W. J. Carlon.)

it in some way or in any way to get interest and Mr. Sheridan did not reply, "Bill, I might lose it," and I did not answer, "Oh, no, you will not lose it," or words to that effect. I never had any such conversation as that with Mr. Sheridan. At the first meeting I had with Mr. Sheridan, the first conversation he asked me to sign the release. He asked me at the close of that conversation, that he wanted me to loan the money. He asked me if I didn't want him to loan it for me. It was in this same conversation that he asked me if I would not sign a release. I understood it was a release for the bank. It was after this I got the release through the post office. Sometimes I would not go to the office for a week, or such a matter, maybe longer, and I got that out of the office the first time I went to the post office after that conversation.

Q. How often did you go to the post office?

A. Sometimes I would go every other day and sometimes I would be for a week that I would not be about the post office.

Q. This bears date on the 20th day of June, 1911.

A. It may have been in the post office four or five or six days, I don't know.

Q. Anyway you got this out of the bank?

A. I got it out of the post office—I got the letter out of the post office.

Q. And what did you do with it when you got the letter out?

A. I opened it and put it in my pocket.

Q. Read it?

(Testimony of W. J. Carlon.)

A. Yes.

Q. Did you go home with it? Take it home with you?

A. I had it with me, yes.

Q. And then it was eight or nine days, probably, after that before you saw——

A. Before I met him again in the Douglas County Bank.

Q. In the meantime had you signed it?

A. I hadn't signed it.

Q. You hadn't signed it yet?

A. No.

Q. You had not signed it yet when you met him?

A. No.

Q. Then you carried this around with you for a week or ten days?

A. I carried it in my pocket; I wasn't in any hurry about signing it, didn't know whether I would sign it at all or not.

Q. Did you read it several times?

A. I read it.

Q. Probably read it over several times as you were carrying it around with you?

A. Not very often, I guess, but then I read it.

Q. Well, you did read it several times, didn't you? Did you understand it?

A. I may have read it a second time, maybe.

Q. Well, getting down to two times now, are you? Did you understand it when you read it?

A. I had some idea about what it was, of course.

(Testimony of W. J. Carlon.)

Q. What did you think this meant. "I hereby certify that any sums withdrawn by Mr. T. R. Sheridan from my account on deposit with the First National Bank of Roseburg, Oregon, were duly authorized by me, and the First National Bank is released from all liability relative to the same." What did you understand by that?

A. Well——

Q. Now, answer what you understood that to mean.

A. I understood it to be a release to the bank.

Q. Releasing the bank, and you understood it to say that he had been duly authorized to take the money, didn't you?

A. Now, he hadn't been duly authorized to take the money.

Q. That is what it says, "I hereby certify that any sums withdrawn by T. R. Sheridan from my balance on deposit with the First National Bank of Roseburg, Oregon, were duly authorized by me." You understand that, don't you?

A. That says that way; that don't say that I authorized him.

Q. You signed it?

A. I signed it later.

Q. Was it true?

A. He said to me——

Q. Never mind——

MR. REAMES: Let him finish his answer.

COURT: The answer is not responsive; you can bring it out on re-direct.

(Testimony of W. J. Carlon.)

Q. I asked you if what you signed there was true; was it true that you had duly authorized him to take this money?

A. I hadn't authorized him to take it; I signed that way because he insisted on it.

Q. You signed a statement—deliberately signed a statement that you knew wasn't true?

A. Because he——

Q. Do you want the jury to understand that; that you deliberately signed a statement that you knew wasn't true?

A. I did sign a statement that I knew wasn't true.

Q. Why did you do it?

A. Because he insisted on it.

Q. What did you think he wanted to use it for?

A. He told me it was all right; it was on their form.

Q. Form for what?

A. Just to satisfy this man Goodheart.

Q. Satisfy the Bank Examiner?

A. Yes.

Q. Then what you want this jury to understand is, that you deliberately signed a writing that was to be used to deceive the Bank Examiner—that is what you want the jury to understand, is it; that you deliberately signed a writing that was to be used to deceive the Bank Examiner?

A. Well, I didn't know who it would deceive.

Q. You have just told us that he wanted to use it with the Bank Examiner and you knew it wasn't true, you say. Do you mean, Mr. Carlon, to have this jury

(Testimony of W. J. Carlon.)

understand that if a man told you he wanted to deceive a Bank Examiner or a bank and wanted, therefore, you to sign a false statement in order that he might use it for that purpose, that you would sign it?

A. I signed that at the request of Mr. Sheridan.

Q. You would sign at his request a false statement to swindle somebody else or deceive them?

A. Yes, I accepted them notes and after he checked my bank book he gave me those checks there——

Q. Yes, now, Mr. Carlon——

A. —but he gave them to me and I accepted them all——

Q. You had those notes——

A. —because I had known him for a long time and transacted business with him——

Q. You took these——

A. —and I had faith enough in him to think that he would not——

COURT: This is not responsive to any question.

MR. REAMES: It is answering to a question asked him.

COURT: This witness's answers are entirely argumentative, out of place in a court room; if it weren't for his age I would not tolerate it.

Q. Mr. Carlon, when he gave you these notes you accepted them?

A. I did, finally.

Q. And you held these notes and put them into the hands of an attorney to collect, didn't you?

(Testimony of S. A. Sanford.)

A. I did later, in Mr. Eddy's hands for a short time.

Q. Whose hands.

A. Mr. Eddy's hands for a short time and he had them to correspond right to Portland here where he was on 124 Third Street——

Q. I asked you in whose hands he put them?

A. Had his communication with Mr. E. B. Duffy.

Q. Eddy gave them to E. B. Duffy, or did you?

A. He wrote them and he refused to answer the attorney, and later I had J. H. Booth interview him in regard to my contention and he sent one hundred dollars.

Q. Interview Mr. Sheridan?

A. Yes.

Q. Then you were trying to collect those notes of Mr. Sheridan?

A. I wanted to collect, of course; I made up my mind, I didn't have a penny. I wanted to collect, of course.

S. A. SANFORD

Recalled, testified as follows:

DIRECT EXAMINATION BY MR. REAMES:

COURT: Is he to prove anything but the transfer of the accounts, Mr. Reames?

MR. FULTON: We will admit the transfer.

COURT: Do you expect to prove anything but the transfer?

(Testimony of Charles C. Verrell.)

MR. REAMES: No, if the court please, except that after both of them appear the words, "Loan, one thousand dollars"; that is all.

MR. FULTON: It will show, just what it does, we can refer to the accounts, he need not prove it.

MR. REAMES: Then the Government will offer in evidence that part of the individual ledger at page 519 showing the debit claim under date of April 7, 1911, and the individual ledger page 519 showing the charge of \$500 April 27, 1911.

MR. FULTON: All right.

MR. REAMES: The first one was a thousand dollars. That is all, Mr. Sanford.

## CHARLES C. VERRELL

A witness called on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES:

I live at Roseburg and am a son of witness, Laura M. Verrell. I have lived at Roseburg since 1891 and until August, 1910, have been the business manager for my mother in Roseburg. I had a conversation with Thomas R. Sheridan in August, 1910, prior to the time that the Crouch loan, \$4,000 was paid. I was going to leave Roseburg and dropped into the bank one day and I told Mr. Sheridan when that was paid in, if he knew of any good loans, to let me know. I told him

(Testimony of B. C. Agee.)

I would like to investigate the security myself. Mr. Sheridan said "all right," or some words to that effect. I don't remember just exactly what the answer was. I never had any subsequent conversation with him about it. I left Roseburg about the middle of August, 1910, and only made occasional trips home, and was not in a position to attend to the business of my mother or to examine the character of the security after that. I do not know anything about what arrangements my mother made.

(The defendant offered in evidence a letter written by Mrs. Laura M. Verrell to the defendant, and the same was received and marked as defendant's exhibit No. 5.)

## B. C. AGEE

A witness called on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES.

I have lived at Roseburg, Oregon, since 1869, and have known the defendant for 40 or 45 years. I am engaged in the farming and stock business. During March, 1911, and prior thereto, Mr. Sheridan and I were in the orchard business, in the farming business. He was partners with me in the orchard and farm. The note of date March 4, 1911 (Government's exhibit No. 6), signed B. C. Agee by T. R. S., in favor of one

(Testimony of B. C. Agee.)

David Hull, I never signed. The first time I ever saw that note was after Mr. Sheridan had made an assignment, which was the first time that ever I knew it was against me, when they fetched the notes up in the assignment. Prior to that time I did not have any notice or knowledge of its execution. I never had any talk with Mr. Sheridan, in which I told him to sign that note for me. I never had any talk for him to sign the note that ever I knew of. Here was the first time I ever knew the note was against me.

#### CROSS EXAMINATION BY MR. FULTON:

Mr. Sheridan and I were partners and he was looking after the financial part of it. I never recognized his right to sign my name to a note. But where the money was put to my credit I have an idea I would recognize the right maybe, I don't know.

Q. And if he had told you just about the note, why it would have been all right; you would have considered it all right, wouldn't you?

MR. REAMES: The government objects on the ground it is immaterial.

MR. FULTON: I think it is material to show their relations, what he recognized the situation to be between themselves as to showing intent.

COURT: Yes, but what he would have done——

MR. FULTON: I mean, what he would have recognized. Supposing he hadn't, it would seem ma-

(Testimony of B. C. Agee.)

terial—pardon me for sitting down and talking to the court.

COURT: Certainly.

MR. FULTON: It would seem material, it would go and be material to show or as tending to show what their relations were and what his recognized rights were, even though he had never told him to do this particular thing, if the relations were such that he would have approved it. It seems to me it would have gone to the intent, the other party knowing, and you know it is already proven that this was carried into his account, the money was carried into his account. The Government has proven that.

COURT: I think you can show fully what the relations were and what authority he had exercised up to that time, but to ask the witness to state now what he would have done in case a certain thing were done three years ago or more, I think is scarcely competent.

MR. FULTON: All right, I note an exception.

COURT: Yes.

Q. Now, Mr. Agee, I ask you if you haven't—I don't remember the names of the persons, but if you haven't said to many people in Roseburg many times since this occurred that whatever Mr. Sheridan did in respect to using your name in that matter was with your authority, he had a right to do so in transacting the business?

(Testimony of B. C. Agee.)

MR. REAMES: The Government objects; there is no proper foundation laid for the impeaching question.

COURT: I think you will have to state the——

MR. FULTON: That is not impeaching, Your Honor, necessarily; it is agency, and I suppose you can prove agency by the declaration of the principal any time.

MR. REAMES: Yes, but if the court please, before he should be asked a question such as that, whether the counsel says it is impeachment or not, it is impeachment or is a statement out of court contrary to his testimony in court, he should first call his attention to the time and place and persons, so that the witness may have an opportunity to explain.

MR. FULTON: That would be the rule if it was an impeaching question. There are many questions that impeach because they contradict, but this is for the purpose of establishing agency, and any declaration of a principal as to agency, as I understand the rule, is admissible whether before or after the fact, as far as the declaration of the principal itself is concerned. Now, I am asking for declarations he had made as tending to show the agency.

COURT: I think the testimony is impeaching in its nature, so far as this particular witness is concerned. You might prove it by the other witnesses. I will pass on that question when we come to it, but as to this particular witness I think the testimony is of an impeaching character.

(Testimony of B. C. Agee.)

MR. FULTON: Save an exception, if the court please.

Witness continuing: I never looked to see whether any of this money went into my account. I pretty generally approved of whatever Mr. Sheridan did, in managing my affairs.

BY MR. FULTON: Now, do you remember, Mr. Reames, the amount they said the debit balance was—the amount he was indebted at the time?

BY MR. REAMES: \$229 an overdraft.

Witness continuing: If I had know that I was owing the bank \$229 and this was borrowed in my name and put into my account, I don't know what I would say about Mr. Sheridan's authority to do that. I would not want him to sign a note. I would want to sign it myself. It makes a difference, of course, if the money went into my account. But I would like to sign the note myself.

Q. I am not talking about signing the note, I am talking about taking the money and paying it into your account. It shows, as far as that is concerned, it was signed by Mr. Sheridan?

A. Yes.

Q. It wasn't an attempt at a forgery; he put it in your name by himself and he put the money in your account?

A. Yes.

Q. That was all right, wasn't it?

A. Yes, that would be all right, I guess.

(Testimony of J. E. Haney.)

Q. Well, you would not feel that he was doing you an injustice or wrong in doing that?

A. Well, it would not look that way.

J. E. HANEY

A witness called on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. REAMES:

I formerly lived in Douglas County for 35 years. I was engaged in the farming and stock raising business. I knew T. R. Sheridan for 35 years and from the year 1908 I had a deposit in the First National Bank at Roseburg. I had a conversation with Mr. Sheridan in 1910 about loaning my money. I had about \$5,000, perhaps a little more than that, on deposit. The money had been there for two or three months and I decided it was not doing me much good just laying there. I didn't know as I would want to use it right away and I asked Mr. Sheridan if he could loan it for me, so that I could get some interest out of it, and he said he could, and I said, "How about—can you give a good security?" and he said, "Any loan I make, I will O.K. it myself." He said, "Will that be all right?" and I said "It will." He did not ask to borrow it himself.

(The Government offered and there was received in evidence a memorandum check of date May 24, 1911, for \$5,000 against the account of J. E. Haney, upon the

(Testimony of J. E. Haney.)

First National Bank of Roseburg, the defendant admitting that the instrument, with the exception of the printed portion thereof, is entirely in the handwriting of the defendant, and the same was marked Government's Exhibit No. 15.)

Witness continuing: I did not write that memorandum check. Did not ever tell Mr. Sheridan to write it. I don't remember when I got that memorandum check, but I didn't understand it when I got it. I didn't really know just what it was. I was about 37 miles from Roseburg when I received it, and it was two or three months later that I again saw Mr. Sheridan.

The Government offered and there was received in evidence a promissory note of date May 24, 1911, in favor of J. E. Haney, in the sum of \$5,500, with interest at six per cent, payable on demand, the defendant admitting that the instrument is entirely in the handwriting of the defendant. It was marked Government's Exhibit No. 16.

Witness continuing: I never seen this.

Q. You never saw the note?

A. No.

Q. Did you ever see this note before I handed it to you at this time?

A. No.

#### CROSS EXAMINATION BY MR. FULTON:

When I talked to Mr. Sheridan I said I would like to have him do something with that money that would

(Testimony of J. E. Haney.)

bring me in some interest, or words to that effect, and asked him if he could loan it for me, and he told me that he could, and that any loan he made he would O.K. That is, he would be personally responsible for it, I understood. That is the substance of what was said.

Q. Now, you understood from that that he had a right to take your money and invest it as he saw fit, did you not?

A. Well, I don't hardly know.

Q. Well, now, didn't you feel that the money was in Mr. Sheridan's hands by that arrangement—didn't you feel that, and wasn't that really your understanding, that the money was there in Mr. Sheridan's hands?

A. Yes, when I gave him authority to loan it, I suppose.

Q. It was in his hands?

A. Yes, sir.

Q. And consequently of course he had a right to take it from the bank for the purpose of loaning it and he could not loan it otherwise; you understood that, didn't you?

A. I supposed I would have to check it out for him.

Q. You say you supposed you would; you had told him to take it and use it, hadn't you? Hadn't you?

A. I told him to loan it for me.

Witness continuing: In October, 1914, at Marshfield, Mr. Bennet wanted my deposition, as I was going away, and he got me to come to his office and make a statement.

(Testimony of S. A. Sanford.)

(The defendant offered and there was received in evidence the affidavit of the witness. It was marked Defendant's Exhibit No. 6.)

Witness continuing: There is one word in there that I don't remember of saying, "To use it." I never read the affidavit until a short time ago, but it was read to me by Mr. Bennet before I signed it. I told Mr. Sheridan to loan my money for me. With the exception of that phrase the affidavit is correct.

(It was admitted that no representative of the Government was present when the deposition was taken and that the Government had no notice that it would be taken.)

Witness continuing: When I received the memorandum check I didn't understand it, thought my money was still in the book and checked against it.

## S. A. SANFORD

Being recalled testified on behalf of the Government as follows:

## DIRECT EXAMINATION BY MR. REAMES:

COURT: Do you expect to prove anything more than the transfer of the account?

MR. REAMES: I expect to prove the transfer of the money and that thereafter the witness overdrew his account, for the purpose of corroborating his testimony,

(Testimony of S. A. Sanford.)

as to the fact that he didn't know his money had been withdrawn.

MR. FULTON: I don't think it is corroborating to show the mere fact that he had an overdraft. He says he supposed it was there and drew against it, but I don't know that that corroborates his testimony, the mere fact that he had an overdraft. Many men have an overdraft, they might say their intention was so and so, but that don't prove it.

COURT: You admit the transfer of the account?

MR. FULTON: Yes, the transfer of the money.

COURT: Will the books show that checks were in fact drawn?

MR. REAMES: The books will show that checks were drawn.

COURT: And honored?

MR. REAMES: And honored; and honored by creating an overdraft.

COURT: I will permit you to prove that.

Witness continuing: On page 605 of the individual ledger at the account of J. E. Haney, the item dated May 24, 1911, shows a charge of \$5,500; the notation after it is, "To T. R. S.," which means T. R. Sheridan. After that six checks were drawn against the account, which put the account \$170.50 in overdraft. On July 12 a \$300 check came in and was charged to his account, overdrawing it \$170.50, and on July 13 \$200 placed to his credit took it up. It was there for one day, really,

(Testimony of W. E. Chapman.)

the overdraft. On July 12th Haney's account showed a credit of \$28.

### CROSS EXAMINATION BY MR. FULTON:

Witness continuing: After July 12th there were other deposits to the credit of Haney's account; there was one deposit of \$200 and also another one of \$700. The first was made on July 13th and the second on July 24th.

### W. E. CHAPMAN

A witness called on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES:

I live 15 miles from Roseburg. I am a farmer by occupation. I have known Mr. Sheridan all my life. I have been for a long time a depositor of the First National Bank. I had very nearly six hundred dollars in the bank in January, 1911; I put enough in to make even up \$600.

MR. REAMES: Before I go any further with this testimony, if the court please, in fairness I should say to the Court this is not an indictment count.

MR. FULTON: Well, then, we will object when you ask another question. Wait until then.

Q. What conversation, if any, did you have with Mr. Sheridan about loaning your money?

(Testimony of W. E. Chapman.)

**MR. FULTON:** I object to that, if the court please, what conversation he had as to loaning his money. He is not one of those named in the indictment and I don't know that I can add anything to what I have suggested to the court as to my views on this question.

(Argument by counsel.)

**COURT:** I realize when outside transactions of this kind are gone into the defendant is placed at a disadvantage, especially where the trial takes place at a long distance from where the transaction occurred, but the intention of fraud on either the banking association, or some other person, is an essential part of this crime, and in my opinion the amount of money drawn out would have some bearing, at least, upon that question, and I think the testimony is competent. I will give the defendant every opportunity to meet it in the course of the trial, but I think the testimony is competent upon that one issue. I will instruct the jury now, however, that this has no bearing upon the question whatever as to whether or not he was authorized to check out the money of these other persons, and you must not consider the testimony in that light. You can only consider its bearing upon the question as to whether or not the defendant intended to defraud the banking association or any other person or persons.

**MR. FULTON:** I thank the court for that instruction, and I am going to ask the court if I am correct in this, that there are two elements of this crime, both of which they must find against the defendant; namely, first, that he took this without authority——

(Testimony of W. E. Chapman.)

**COURT:** Yes, the want of authority, and criminal intent.

**MR. FULTON:** Now then, even if they should find he took without authority, that would not necessarily constitute the offense, unless they also find he took it with criminal purpose; therefore they must first find whether he had authority. Now, as Your Honor says, and I think that is fully explained, this testimony can only be considered if they should find that he took this other without authority—that he took Carlon's and these other people in the indictment, the mere fact that Sheridan took these can be considered only for the purpose of finding what his intent was. I understand we have an exception?

**COURT:** Yes, you have an exception to all the testimony.

**MR. REAMES:** I would like permission of the court to make a statement, and may I have just a word?

**COURT:** Yes.

**MR. REAMES:** I think Your Honor will bear in mind, and counsel will admit, that at the hearing on demurrer in open court, defendant and counsel being present, I then and there offered to the defendant to give a bill of particulars if he should want one. I renew the offer at this time, so they will not be taken by surprise.

**MR. FULTON:** Counsel is quite right, he offered to give us a bill of particulars, that was to aid the indictment. We were talking about the indictment. I

(Testimony of W. E. Chapman.)

never heard anything about these things at that time, he didn't mention anything about these people. I didn't know what a bill of particulars meant, I supposed the bill of particulars that he proposed was simply what was in the indictment.

**MR. REAMES:** Of course the names of every one of these witnesses was on the indictment.

**MR. FULTON:** That might be, they might be on the indictment, but there was nothing of what they said or what they were there for. I think I will ask to have the statement of counsel stricken out.

**COURT:** Yes, the jury will be guided simply by the testimony and not by what counsel might say.

Witness continuing: I had a conversation with Mr. Sheridan about loaning my money; I went in and told him that I would like to have enough money in there to loan and I said, "I will place enough in there to make it even up six hundred dollars." When I first went in I said, "Tom, I would like to loan the money I have in the bank." And I said, "I have put enough in to even up six hundred dollars." Tom said, "I can loan it for you." And that was all that was said about it. After that I had a chance to loan my money, and after the transfer was made into the other bank, just about the time they were transferring, I went to the other bank and called for my money. It was at this time that I first found out that I didn't have any money in the bank; this was after the consolidation of the two banks.

(Testimony of M. S. Doerstler.)

'(The Government offered and there was received in evidence a memorandum check of date January 18, 1911, upon the account of W. E. Chapman, at the First National Bank, in the sum of \$600, the defendant admitting that the document is wholly in the handwriting of the defendant. It was marked Government's Exhibit No. 17.)

Witness continuing: I have now examined this memorandum check; and I never signed it.

BY MR. FULTON: You understand our objection goes to all these?

COURT: Yes.

Witness continuing: The first time I ever saw this memorandum check, this Government's Exhibit 17, was here in the court room last Sunday. I saw Sheridan after the consolidation of the two banks, and I said, "Tom, where is my money that has not been transferred?" and Mr. Sheridan says, "I will look after it and straighten it up for you." That was the first conversation. There was nothing said at that time about him borrowing the money himself. I never received any note for the money.

## MOSES S. DOERSTLER

A witness called on behalf of the Government, testified as follows:

(Testimony of M. S. Doerstler.)

**DIRECT EXAMINATION BY MR. REAMES:**

**BY MR. REAMES:** This testimony, if the court please, of Moses S. Doerstler, forms the basis of counts two and six of the indictment.

Witness continuing: I live at Marial in Curry County, Oregon, and have lived there since 1898. Marial is on the coast and is 73 miles from Roseburg. Between my home and Roseburg there is a range of mountains. I am 54 years old and my occupation is that of carpenter and miner. I have been banking with the First National Bank since 1898. I had a conversation with Mr. Thomas R. Sheridan in the spring of 1908 in the bank at Roseburg. I told Mr. Sheridan that I would like to have interest on my money I had there in the bank and I did not like to have it tied up any length of time on account may want to use it and invest it and he told me then he would give me six per cent interest and any time within thirty days' notice he would have the money ready for me. I don't know how much money I had in the bank at that time. I did not then know and do not now know Mr. Warren P. Reed of Gardiner.

**Q.** Here is a memorandum check of date March 22, 1911, for \$530, marked to W. P. Reed. I will ask you to examine that and state whether or not you wrote it.

**MR. FULTON:** We don't contend that he wrote it.

**A.** Who wrote it?

(Testimony of M. S. Doerstler.)

MR. REAMES: Of course nobody contends that he wrote that.

Q. Did you write that?

MR. FULTON: There is no use taking up time asking him, because those checks are in Mr. Sheridan's handwriting.

MR. REAMES: It is admitted that this memorandum check is entirely in the handwriting of the defendant, T. R. Sheridan, with the exception of the printed part?

MR. FULTON: Yes.

MR. REAMES: The Government will then offer it in evidence.

COURT: Admitted.

Marked GOVERNMENT'S EXHIBIT 18.

MR. REAMES: This, gentlemen of the jury, is similar to the others, dated March 22, 1911, written in lead pencil, marked "Charge M. S. Doerstler, \$530."

Q. Now, there was this one conversation that you had with Mr. Sheridan; did you ever have any other after that about him loaning your money?

A. No.

Witness continuing: Afterwards, of course, I told him all right, he should go ahead and loan the money. I had no other conversation with him about loaning my money for me.

(Testimony of M. S. Doerstler.)

(The Government offered and there was received in evidence a memorandum check of date April 27, 1911, for \$260 against the account of Moses S. Doerstler at the First National Bank, the defendant admitting that, with the exception of the printed portion the instrument is in the handwriting of the defendant, the Government stating that the instrument formed the basis of count No. 6 of the indictment. It was marked Government's Exhibit No. 19.)

Witness continuing: I did not write that memorandum check. The first time I saw Government Exhibit No. 18 and Government Exhibit No. 19 was when I got the statements from the bank. I do not remember when that was, but I usually get statements once a year. With reference to the promissory note of date April 27, 1911, for \$260 payable on demand, with interest at six per cent, signed T. R. Sheridan, I don't know as I seen the note, but I heard there was notes out. It may have been in the fall of 1912 when I first heard of that note. I never had possession of it. I first heard of it as being in the safe of Mr. Coshow, who is a lawyer at Roseburg, and the attorney for S. A. Sanford, Trustee of the First National Bank, in liquidation.

(The Government offered and there was received in evidence the note of T. R. Sheridan of date April 27, 1911, and the same was marked as Government's Exhibit No. 20.)

Witness continuing: With reference to the endorsement on this note, "May 6, 1911, paid on this to Russell

(Testimony of M. S. Doerstler.)

\$250.” I understand that transaction. I know who Russell is; he lived at Wilbur; I bought a farm from Russell in Curry County and of course called on Mr. Sheridan for the money to pay for it. I didn’t give him any thirty days’ notice. I came out and wanted to make the deal right away. Then Mr. Russell—they changed the account of the bank—Mr. Sheridan couldn’t get the money right away and then we changed the account from the bank to Mr. Sheridan, to pay up the balance of the amount I was to pay for the farm. I paid \$450 down in cash and Mr. Sheridan assumed responsibility for the balance, which was the same as a payment to me. It is my understanding that there is only due on this particular \$260 note the sum of \$10. With reference to this other transaction of \$530 by which it appears that on March 22, 1911, \$530 of my money was withdrawn by Mr. Sheridan and credited to W. P. Reed, I never received any note of that transaction.

BY MR. REAMES: We will prove by the witness Sanford that that has been paid.

MR. FULTON: Of course it has been paid. It was loaned to Mr. Reed and paid by Mr. Reed.

COURT: There is no need of offering any further proof of payment then.

Witness continuing: In regard to the memorandum check of date April 8, 1908, signed M. S. Doerstler, marked draft \$1,000, and a promissory note of the same date, \$1,000 signed T. R. Sheridan, in favor of M. S.

(Testimony of M. S. Doerstler.)

Doerstler, I have never seen the note. Of course I didn't know about the memorandum check. I don't know why I would have this note.

BY MR. REAMES: This is not one of the indictment counts so your objection may go to this.

MR. FULTON: It will be understood?

COURT: Yes.

(The Government offered and there was received in evidence the note and the memorandum check, the defendant admitting that they are both entirely in the handwriting of the defendant. They were received and marked as follows: memorandum check was marked as Government's Exhibit 21; the note was marked as Government's Exhibit 22.)

BY MR. FULTON: At this time it is understood I have an objection to all these matters that are introduced as similar transactions, but there was one objection that I didn't make that I ought to make, I think, to have it in the record and in fairness to bring it to the knowledge of the court; it seems to me that transactions that are three or four years separated from the transactions that form the basis of the indictment are too remote, too far apart. The Chapman transaction would perhaps not be subject to this same objection, but no matter, I think the rule is in all—running entirely throughout the doctrine of similar acts that they must be on or about the same time. That is, that they must be closely associated so as to—or else they afford no proof.

(Testimony of M. S. Doerstler.)

COURT: That would go to its weight rather than to its competency.

MR. FULTON: They are material, of course, in regard to this, because this witness testified he had his conversation in 1908 with Sheridan and that might make a little difference in that.

COURT: The objection will be overruled; you will be allowed an exception.

Witness continuing: This note, Government's Exhibit 22, of date April 8, 1908, for \$1,000 bears two endorsements, one December 15, 1910, paid to Russell, \$500, one April 15, 1911, paid to Russell \$500. I know nothing about those two endorsements.

The Government offered and there was received in evidence a memorandum check on the First National Bank of Roseburg Oregon, against the account of M. S. Doerstler, of date May 1, 1908, for \$469, and a note of the same date, in the same amount, to B. C. Agee, the defendant admitting that the note and memorandum check are entirely in the handwriting of the defendant. They were received and marked as follows: memorandum check marked Government's Exhibit No. 23, note marked Government's Exhibit No. 24.

Witness continuing: I don't know anything about the note. I did not know B. C. Agee at the time of this transaction. I met him for the first time at the Grand Jury last February a year ago. I didn't know that I had his note. Didn't know there was a note.

(Testimony of M. S. Doerstler.)

COURT: You say you have no evidence this was abstracted from the bank?

MR. REAMES: Of this?

COURT: This is the note, you say?

MR. REAMES: I have this evidence; I don't have the memorandum check on this particular transaction, but I have the book entry showing what became of the money.

MR. FULTON: Is it Mr. Sheridan's handwriting.

MR. REAMES: It is admitted that this note is entirely in the handwriting of the defendant Sheridan?

COURT: Admitted.

MR. REAMES: The Government will offer it in evidence, dated March 30, 1909.

MR. FULTON: Is that mentioned in the indictment?

COURT: No. You will be allowed the same objection and same exception, Senator.

Marked GOVERNMENT'S EXHIBIT 25.

MR. REAMES: This is similar to the others, a pencil note of March 30, 1909, promissory note, pay M. S. Doerstler \$500 on demand. The Government will admit that the printed matter and of course the bank stamping is not in the handwriting, but all of the pencil marks there are in the handwriting of the defendant Sheridan?

COURT: Yes.

(Testimony of M. S. Doerstler.)

Witness continuing: I did not know and do not know any man by the name of A. M. Kelsay. In regard to the memorandum check of date May 10, 1910, signed M. S. Doerstler, by T, for \$1700, I know nothing of that transaction.

(The Government offered and there was received in evidence the memorandum check, the defendant admitting that with the exception of the printed matter, the document is entirely in the handwriting of the defendant. It was marked as Government's Exhibit No. 26.)

Witness continuing: In regard to the promissory note for \$1,000, of date May 5, 1910, purporting to have been signed by Mr. Sheridan, another one of the same date, purporting to have been signed by A. M. Kelsay, by T. R. S., I have now examined these notes and this is the first time that I ever saw them.

The Government offered and there was received in evidence the promissory note of date May 10, 1910, signed A. M. Kelsay, by T. R. S., a demand note for \$700, the defendant admitting that the document is, with the exception of the printed matter, entirely in the handwriting of the defendant. It was marked as Government's Exhibit No. 27. The Government offered and there was received in evidence the promissory note of date May 5, 1910, due on demand, to M. S. Doerstler, signed by T. R. Sheridan, the defendant admitting that it is entirely in the handwriting of the defendant, with the exception of the printed matter. It was marked as Government's Exhibit No. 28.

(Testimony of M. S. Doerstler.)

Witness continuing: In regard to the note dated the 10th month and 6th day, 1909, signed A. M. Kelsay by "T.R.S.," I have now examined this note and this is the first time I ever saw it.

The Government offered and there was received in evidence the promissory note dated 10/6/09, payable to M. S. Doerstler, signed A. M. Kelsay by "T.R.S." for \$1,000, the defendant admitting that the document is, with the exception of the printed matter, entirely in the handwriting of the defendant. It was marked as Government's Exhibit No. 29.

Witness continuing: When I was in Indiana I received a letter from the Bank Examiner, but didn't take much thought to it. I signed the clause at the bottom. When I received it through the mail in Indiana of course I read it over; I didn't put any thought to it really. I did not understand what it was, what it meant, really. I simply signed it and sent it back.

#### CROSS EXAMINATION BY MR. FULTON:

Witness continuing: When I went to Mr. Sheridan to see about loaning my money I found him at his bank. I spoke to him about putting my money out and that I would like to have it put out so that it would be drawing interest. I met him in the bank and said I would like interest on my money that is in the bank. I told him I didn't like to loan it out and have it any length of time and have it tied up but I might want to invest or use it. Then he told me he would give me six per

(Testimony of M. S. Doerstler.)

cent; he would loan it out for me and give me six per cent interest and any time within thirty days' notice, why he would get the money for me to use, so that I would have it to use. Of course I thought that was all right. He said he would loan it out for me. I do not remember that he said anything about taking it and giving me six per cent interest. I supposed the bank was responsible; I had made the arrangement with Mr. Sheridan. I expected Mr. Sheridan by that authority that I gave him that he had a right to take the money out and loan it. But if the bank loans money they usually have good security. I didn't care whom he loaned it to; I left that to his judgment. I did not expect him to report to me anything about it; it is not true that most of the money has been repaid to me. I got my statements from the bank once a year from the time I commenced depositing there. When I got the bank statement I would get these memorandum checks and I supposed that he had loaned that money for me. I did not know that these notes were left in the bank and knew nothing about what arrangement was made about the notes. In regard to the note, there is a payment endorsed upon it of \$1,000, being two payments of \$500 each. I do not understand it unless it was paid to Mr. Russell on the land transaction. I don't know whether it is paid or not. I know nothing about the other note that has an endorsement upon it, July 20, to Russell, \$500. My bank statements did not show the payments to Russell. I do not have a bank book; I was back in Indiana when I signed the statement for

(Testimony of M. S. Doerstler.)

the Bank Examiner; I received it through the mail; I read it over before I signed it and knew where to sign. To tell the truth about it, I didn't read it carefully; I didn't have no notes to show for the amounts, didn't have my statements with me and didn't know whether it was right or not. I understood that Mr. Sheridan had told the Bank Examiner he had made these loans out of my account, I understood that, but I didn't give much thought to it. I didn't understand and I just simply signed it. I didn't know where there was any notes out there. I have now read the statement and release over since I have been on the stand and I understand it now, but didn't then. It is just the same now as it was then but I didn't give it any thought. It is not true that the first time I discovered I didn't understand it was when I concluded that I wanted to sue the bank. I am getting ready to sue the bank now and concluded to do so last winter; I forget what date it was; it was about the first of January, 1915.

Q. Then you concluded you hadn't understood this letter, didn't you?

A. Yes.

Witness continuing: I filed a claim against Mr. Sheridan, against the Trustee, for this money.

Q. In the Roseburg Hotel last fall, I can't fix the date, but sometime last fall, when Taylor was present and Watson was present and you were talking then about this money that you had—that Mr. Sheridan had loaned—taken—and did you not then and there say that you had loaned this money to Sheridan and that

(Testimony of M. S. Doerstler.)

it was your money and it was nobody's business whether you got it back or not?

A. I don't remember that.

Q. Or words to that effect? Will you say that you didn't make that statement?

A. I don't remember.

Q. You don't remember anything about that?

A. Not about that, no.

Q. You have no recollection of making any such statement at all?

A. All that I ever said of Mr. Sheridan, he has promised me time and again if he got through with this case here he would square up all those accounts. But that must have been what I said, I don't know what else it was.

Witness continuing: I understood as I received certain bank statements from the bank, which have now been shown to me, that Mr. Sheridan was making loans for me.

(The defendant offered and there was received in evidence three bank statements, identified by the witness. They were marked defendant's exhibits 7a, 7b, and 7c.)

#### RE-DIRECT EXAMINATION BY MR. REAMES:

In regard to the conversation which I had with Mr. Sheridan about loaning my money, in 1908, I never had any other conversation with him about loaning my money and I have told the entire conversation.

(Testimony of S. A. Sanford.)

**S. A. SANFORD**

Recalled as a witness on behalf of the Government, testified as follows:

By the witness: The individual ledger at page 272, under date of April 8, 1908, at the account of M. S. Doerstler, shows a charge of \$1,000 against Mr. Doerstler's account. The memorandum check of the same date is in Mr. Sheridan's handwriting. By this transaction \$1,000 was taken from the account of M. S. Doerstler on that day. On the individual ledger at page 272 under date of May 1, 1908, there is a notation, "to B. C. Agee Account \$469 charge." On the individual ledger at page 6, in the B. C. Agee account, under date of May 1st, 1908, there is a credit entry on the account of B. C. Agee for \$469.

1 (The Government offered and there was received in evidence a deposit slip, showing that on May 1, 1908, \$469 was credited to the account of B. C. Agee, the defendant admitting that the document is entirely in the handwriting of the defendant. It was marked Government's Exhibit 30.)

It was admitted by the defendant that each of the transactions that was testified to and identified by memorandum checks, when Mr. Doerstler was on the stand, represents and were transactions whereby the money on the date that the memorandum checks bear date went out of the account of the depositor Doerstler and into the accounts of those persons mentioned in the

(Testimony of S. A. Sanford.)

deposit slip in each of the cases where Mr. Sheridan put in a memorandum check.)

Witness continuing: In the second individual ledger at page 268, the account of M. S. Doerstler, under date of March 30, 1909, is charged with \$500.

MR. REAMES: Here is another that we have no memorandum check for, which is Government Exhibit No. 29, the note being on demand.

MR. FULTON: How do you get the transfer of this, what was there for it, to show the transfer?

MR. REAMES: On that day the account of M. S. Doerstler was charged.

MR. FULTON: I know you have the account charged.

MR. REAMES: And the note.

MR. FULTON: But that really doesn't prove anything without showing there was something put in there authorizing the transfer. The mere fact that the account is charged by some other person doesn't prove anything. The only reason I raise the question is because I want to see just what manner of authority was given for making the transfer.

MR. REAMES: This one, Government's Exhibit No. 25, Your Honor, is the first one where we haven't had the memorandum check. It is a note dated March 30, 1909, written to M. S. Doerstler.

MR. FULTON: It is not one that is in the indictment, Your Honor.

(Testimony of S. A. Sanford.)

MR. REAMES: For five hundred dollars.

COURT: How is the note signed?

MR. REAMES: The note is signed T. R. Sheridan and it is admitted that the note is in his handwriting. Now, the only way we have of connecting that up with the checks is that on that same day the account of Mr. M. S. Doerstler, the depositor, was charged with that sum of money.

COURT: Yes, but you haven't the check here and no proof whatever as to how it came to be drawn out. It is no evidence against this defendant.

MR. FULTON: It is not a mere incident at all.

COURT: No.

MR. FULTON: That I would object to.

COURT: I will sustain the objection as to the two notes where there is no memorandum checks.

MR. REAMES: I have a little more proof on the notes, if the court please.

Witness continuing: This note of M. S. Doerstler payable to M. S. Doerstler for \$1000, dated 10/6/09, in the handwriting of the defendant, signed A. M. Kelsay by "T. R. S.," Government's Exhibit No. 29 and a deposit slip under date of 10/6/09, for \$1000, bearing paid stamp of the bank of October 6, 1909, by that transaction \$1,000 was on that day deposited to the account of A. M. Kelsay.

The Government offered in evidence and there was received without objection the deposit slip for \$1000,

(Testimony of C. E. Marks.)

in the handwriting of the defendant, and it was marked as Government's Exhibit 31.

Witness continuing: At page 541 of the individual ledger under date of March 22, 1911, at the account of M. S. Doerstler, there appears the entry of a charge of \$530, with the notation "Reed;" that was Warren P. Reed, one of the directors of the bank at the time, and Reed subsequently paid it.

C. E. MARKS,

A witness called on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION BY MR. REAMES:

I am 73 years old and live at Roseburg; I am a farmer by occupation. I have known Mr. Sheridan 30 or 40 years. Have done business with the First National Bank in Roseburg since it was first established. I had a talk with Mr. Sheridan about loaning my money that was in the bank. There have been a good many loans made there. The two notes that is not paid there now is a memorandum check for \$500 loaned—supposed to be loaned to Mr. Agee—and a note of \$2,000 loaned to Mr. Sheridan, is all; I suppose it is to himself. There are two notes that have not been paid. In regard to this memorandum check of date July 27, 1908, marked "T. R. S. \$2,000," that must be to Sheridan. I seen that in my bank book when it was returned written up. I

(Testimony of C. E. Marks.)

don't remember when that was. When I thought there was some business down there that required to have it written up I had it written up but I would not get it by any means every month.

The Government offered and there was received in evidence the memorandum check, the defendant admitting with the exception of the printed matter it is entirely in the handwriting of the defendant. It was received and marked as Government's Exhibit No. 32.

Witness continuing: In regard to the promissory note of the same date for \$2,000, signed T. R. Sheridan, payable to me, on demand, with interest at 7 per cent, I first saw that note about a year and a half after the Douglas National Bank and the First National Bank were consolidated. Mr. Sheridan wanted them notes, in fact all of these papers that are there he handed to me; that is the first I ever seen them. That must have been in the years 1912 or 1913 when I saw this note for the first time. In regard to the notation on the memorandum check and the notations on the back of the note, showing interest paid in 1909 and in 1910, I can explain them. The time the last interest was paid there was only—this note was in the First National Bank and that memorandum check was for—the note itself was laying in the First National Bank of Roseburg at that time. That was paid; that the interest was paid on it, and Mr. Sheridan he took out the interest off of that marked interest paid on the memorandum check. Aside from those two payments of interest, the balance of this promissory note at this time remains unpaid.

(Testimony of C. E. Marks.)

The Government offered and there was received in evidence the promissory note, the defendant admitting that with the exception of the printed portion thereof it is entirely in the handwriting of the defendant. It was marked Government's Exhibit 33. It was admitted that on the day the check bears date that that amount of \$2,000 was taken from the account of the depositor.

It was admitted that the note and memorandum check, each bearing date February 23, 1910, are in the handwriting of the defendant. The Government offered the note and memorandum check in evidence and they were received and marked as follows: The memorandum check was marked Government's Exhibit No. 34 and the note was marked Government's Exhibit No. 35.

Witness continuing: In regard to the first note for \$500 of date February 23, 1910, I seen that note the same time as I seen the other note. They were all in the First National Bank a year and a half after they were closed up; that is, a year and a half after the Douglas National Bank took charge, which would be probably in 1913, I saw that note for the first time. The agreement was it was loaned to Mr. Agee, it wasn't loaned to Mr. Sheridan; it was loaned to Mr. Agee and then this note, Mr. Sheridan put that note in afterwards; I never seen it. The memorandum check was in the pass book, but before the memorandum check was drawn I didn't tell him to loan my money to Mr. Agee. I told him he could loan the money and he loaned it to

(Testimony of C. E. Marks.)

Mr. Agee, that is all I could tell you about it. And when Mr. Agee must have paid the note and he stuck in one of his own. That is about the way I see into that. There was another note loaned sometime ago, a \$5,000 note, I don't know exactly how long ago. It was loaned in the bank there, the First National Bank. Mr. Sheridan was the borrower. I suppose he drew his notes, I could not tell you. That \$5,000 item has been paid. As near as I can remember I was just about going to the old country before this loan was made and I asked Sheridan if he could make the loan of this money and he said he could and I believe he gave me his note for—I don't know—it is for a year's time, anyway. He gave me his note about a year and a half before these other papers. I was just about leaving for the old country and I came into Mr. Sheridan's bank and he said to me "The Bank Examiner said he wanted to see you." "All right" I said "I go in and see him." And he introduced me to the Bank Examiner, Goodheart. Before that time I had never seen that note for \$5,000.

The note having been paid and being in the possession of the defendant, it was then delivered by the defendant to the Government; it was admitted that the note was entirely in the handwriting of the defendant with the exception of the printed matter; the Government offered and it was received in evidence and marked as Government's Exhibit No. 36.

Witness continuing: I talked with Mr. Sheridan about making that \$5,000 loan about two weeks before

(Testimony of C. E. Marks.)

the National Bank Examiner was there; I had told Mr. Sheridan that he could make a loan of the money; I came into the bank and the Bank Examiner was there, and I went in and saw the Bank Examiner, and signed a release at that time. The release was a release to the Bank for \$5,000 and I signed it.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I talked with Mr. Sheridan about loaning this \$5,000 two weeks before I saw the Bank Examiner. I saw the Bank Examiner some time in June. It was on a Saturday. Afterwards I received a letter from him. It was to the same effect as defendant's exhibit No. 3, now exhibited to me. After I had signed the release I received another from the Bank Examiner. This letter I received from him had nothing to do with the \$5,000; I was in the old country when it came. It came to my residence while I was in Europe and I didn't see it until my return and I didn't sign it. The \$5,000 had probably been deposited in the bank a couple of weeks before I had my talk with Mr. Sheridan. I had had a talk with Mr. Sheridan before I put the money in the bank about loaning it and I told him the money could be loaned out and he said it would be loaned. All the loans I ever understood he made the bank guaranteed these loans. He had authority to take it and loan it and I understood that the loans would be guaranteed. I told him the time I loaned the money that I thought the bank was guaranteeing it. Mr.

(Testimony of C. E. Marks.)

Sheridan absolutely guaranteed these loans. Sheridan himself said that it did. He said it himself. And outside of the bank he was worth a quarter of a million dollars. This \$5000 was repaid to me all right and there was not anything in writing about that. There was absolutely nothing wrong about that \$5000 transaction and I don't claim there was. This memorandum check of date June 27, 1909, I got that at the time the bank book was written up and returned to me. I probably had the book written up every two or three months or perhaps a shorter time. So I would suppose that this memorandum check reached me within two or three months after it was put in the bank. When I got it I understood what it meant; I understood that Mr. Sheridan had taken \$2000 out of my account; I didn't pay any attention to it. The only misunderstanding is about the \$500 memorandum check, that is loaned to Mr. Agee, and when it came to pay Mr. Sheridan stuck in his own note for the money—for the \$500. That is the only one there is any misunderstanding about between me and Mr. Sheridan. I did not have any conversation with Mr. Goodheart in the bank in the presence of Miss Albright in which I said that I had received his letter. I didn't say anything of the kind.

(Testimony of Harry P. Marks.)

HARRY P. MARKS,

A witness called on behalf of the Government testify as follows:

DIRECT EXAMINATION BY MR. REAMES.

I live at Roseburg, Oregon. I am a farmer and am 30 years old. I have lived there for four years. I am a son of C. E. Marks; I know the defendant Thomas R. Sheridan in a way; I was never acquainted with him and saw him for the first time about three years ago. I had no conversation with him relative to the loaning of my money.

MR. FULTON: It is understood we have an objection to this.

COURT: Yes.

The Government offered and there was received in evidence a memorandum check of date August 10, 1909, for \$745 against the account of Harry P. Marks, at the First National Bank of Roseburg, Oregon, the defendant admitting that with the exception of the printed portion it is entirely in the handwriting of the defendant. It was marked Government's Exhibit No. 37.

Witness continuing: In January, 1912, after the consolidation of the two banks I saw this check for the first time. Started in doing business with the First National Bank in 1907 or 1908.

The Government offered and there was received in evidence a promissory note, of date August 10, 1909,

(Testimony of Harry P. Marks.)

the same date as the memorandum check and for the same amount of money, the defendant admitting that it is entirely in the handwriting of the defendant. It was marked as Government's Exhibit No. 38.

Witness continuing: I never did see that note for \$745 until away along the winter after the bank was closed. I did not know that Mr. Kelsay owed me \$745, until I received the note and memorandum check from my father. I don't remember when it was. I had never spoken to Mr. Sheridan about it at all.

MR. FULTON: It seems to me, Your Honor, that this subject—this being entirely an outside matter and not one of those alleged in the indictment, which is two years subsequent, that this being entirely an outside matter and two years before, it is not admissible under the rule under any circumstances. It is not an incident that can be proven as similar, because it must have been about the time of some of the matters alleged in the indictment to be admissible on that ground, and this is too long prior, too far away to be admissible in this case, I think.

COURT: It is rather remote, the rule is that the transactions must have occurred at or about the same time. I think probably it goes to its weight rather than to its competency. I will admit it; I admitted others of the same nature and allow you an exception.

(The Government offered and there was received in evidence a memorandum check against the account of H. P. Marks in the sum of \$540.32, at the First

((Testimony of Harry P. Marks.))

National Bank of Roseburg, Oregon, of date January 25, 1910, the defendant admitting that it is entirely in the handwriting of the defendant. Also the Kelsay note of the same date, in favor of H. P. Marks, the defendant admitting that it is in the handwriting of and signed by the defendant.

The defendant objected and excepted to the introduction of the note and memorandum check. The memorandum check was marked Government's Exhibit No. 39 and the note was marked Government's Exhibit No. 40.)

Witness continuing: In regard to the Government Exhibit No. 39 and Government Exhibit No. 40, being the note and memorandum check, each dated January 25, 1910, I have now examined them and state that the first time I ever saw them was in the year 1913. I got them at that time from my father.

The defendant admitted that on August 10, 1909, by means of this memorandum check, \$745 was taken from the account of H. P. Marks, and on January 25, 1910, by means of Government Exhibit No. 39, \$540.32 was taken from the account of the depositor and placed to the credit of A. M. Kelsay.

Witness continuing: I received a letter from the Bank Examiner and signed and returned it. I do not know Mr. Kelsay. I never met him; I never told Mr. Sheridan to loan this money.

(Testimony of Harry P. Marks.)

## CROSS EXAMINATION BY MR. FULTON.

My father delivered to me these notes and memorandum checks and I understood that he got them from Mr. Sanford; I had been away from home for three or four months. I had a deposit book but I do not know where it went. I sent in some deposits to the bank with different fellows and in different ways, if I happened to be there. Sometimes I mailed them in to the bank. My father did not attend to any of them for me. I was in business for myself at that time and was not a member of the firm of Marks Bros. I have been since, however. The firm of Marks Bros. at that time was composed of J. E. and E. C. Marks, both of whom are brothers of mine, and I entered the firm in 1913. I knew nothing about these checks or the appropriation of this money until some time in 1913. I did receive a letter in June, 1911, from the Bank Examiner, in which he wanted me to sign a release, or suggested a state of facts that I should, but I didn't realize about it at that time. I did not sign the release, although the letter from the Bank Examiner gave me the amounts that had been loaned out of my account, but I paid no attention to it.

(Testimony of David Hull and W. J. Carlon.)

DAVID HULL,

Being recalled for Cross Examination testified as follows:

CROSS EXAMINATION BY MR. FULTON.

I am acquainted with Mr. George A. Crane. I had a conversation with him during the summer or fall of 1913, at Smith's Livery Stable. I told Mr. Sheridan to use \$500, certainly. I don't remember what I told Mr. Crane that day at all.

W. J. CARLON,

Being recalled for further cross examination, testified as follows:

CROSS EXAMINATION BY MR. FULTON.

I am slightly acquainted with August Schloemann. I saw him on the street in Roseburg shortly after Mr. Goodheart was in Roseburg; he did not remain at my home over night. I have no home but sleep in an old granary. I do not remember of ever having slept with him; he might have been at that place, but I do not recollect it now. I talked with him, however, about Mr. Sheridan and the First National Bank; the talk was on the street; I told him at that time that I had \$1500 in the bank. I told him that Sheridan had my money, that he got it without my knowledge and that I accepted

(Testimony of C. J. Marks.)

notes for it. That conversation, as well as I remember, was on Cass Street; I did not tell him that I let Sheridan have the money. I know Charles Holland of Myrtle Creek. I did not have a conversation with Holland in the spring of 1911 in the Monogram Cigar Store in Roseburg, in which I asked Mr. Sheridan, in the presence of Mr. Holland, if he had loaned my money yet, or if he was going to take it himself. I had no such conversation with Mr. Sheridan in the presence of anybody.

C. J. MARKS,

A witness called on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. REAMES.

I live at Gardiner, am 35 years old, and have lived there all of my life. I am the manager of the salmon cannery at Gardiner and have known T. R. Sheridan for four years. I have been a depositor in the First National Bank of Roseburg since 1908. I never had any conversation with Mr. Sheridan relative to loaning my money; I never wrote him any letter or communicated with him in any way concerning loaning my money. In regard to the memorandum check, of date January 25, 1910, and the promissory note, dated January 25, 1910, each in the amount of \$500, I first saw those two documents after my father gave them to me. This was about a year and a half ago, something like that, and

(Testimony of C. J. Marks.)

was after the consolidation of the First National Bank and the Douglas National, a long time afterwards.

(The Government offered and there was received in evidence the memorandum check and the note, the defendant admitting that with the exception of the printed matter they are entirely in the handwriting of the defendant. The memorandum check was marked Government's Exhibit No. 41 and the note was marked Government's Exhibit No. 42.)

It was admitted that on January 25, 1910, by means of the memorandum check, \$500 was taken from the account of C. J. Marks.

Witness continuing:

No part of this money has ever been repaid. In regard to the memorandum check of date December 6, 1911, for \$800, and a note of the same date, for the same amount, I have examined them and state that I saw them for the first time when father gave them to me. This was after the consolidation of the two banks.

It was admitted that the note and memorandum check are entirely in the handwriting of the defendant. The Government offered them in evidence and they were received and marked as follows: The memorandum check was marked as Government's Exhibit No. 43, the promissory note was marked as Government's Exhibit No. 44.

It was admitted that by this transaction the money was taken from the account of the depositor.

(Testimony of C. J. Marks.)

Witness continuing: I received two releases. Mr. Sheridan and I were doing a lot of business and I thought that I would favor him by signing one and one I would keep, so I would not go entirely broke any way. One of them I signed and one I kept. I signed the release for the \$800, which certified that \$800 had been loaned to T. R. Sheridan, had been withdrawn by Sheridan from my balance and duly authorized by me. But I had not authorized him to do it. The one I did not sign and the release I kept was for \$500. I had a conversation with Mr. Sheridan in the bank about July 7th or 8th, somewhere along there, the year 1911, just after the Bank Examiner had been there. This was after I had signed the release that had been sent to me from the Bank Examiner. I just simply asked Mr. Sheridan where my money was and he said "It is all out working." That is the complete word for word, I think, and I never had any other talk with him about it.

#### CROSS EXAMINATION BY MR. FULTON.

I received two letters of this character from the Bank Examiner. I had a bank book and had interest credited up in the bank book. In January, 1912, I think it was, we straightened the interest up, but I had received interest before that. I could not tell you how early it was that I received interest. My bank book did not show that this money had been taken out of my account. I would send my bank book to my father to have it marked up and that would show that I was getting interest on

(Testimony of Edward C. Marks.)

some loan, but I supposed I was getting it from the bank and that the bank was paying interest. My father was attending to the matters for me. When I signed this release, and I understand exactly what it says, I knew that it wasn't true, and I knew it at the time I signed it. I understand every word of it. I imagined Mr. Sheridan might be a little bit crowded and I thought I would favor him by that. I did not think the Bank Examiner would care, just so long as I released the bank. I know it was stated in the release that I had authorized Mr. Sheridan to take the money, but I signed something that was not true; I thought Mr. Sheridan was all right.

(The release was offered in evidence by the defendant and marked as defendant's exhibit No. 8.)

#### EDWARD C. MARKS,

A witness called on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION BY MR. REAMES.

I live at Roseburg; have lived there for 16 years and am a son of C. J. Marks. I started an account as a depositor with the First National Bank of Roseburg in the year 1905 or 1906. I had a small deposit of \$100 or so and continued as a depositor until the First National Bank consolidated with the Douglas National Bank. I never did have any talk or conversation with the de-

(Testimony of Edward C. Marks.)

fendant, relative to loaning my money, and never wrote to him or communicated with him in any way about it.

The Government offered in evidence a memorandum check, of date June 29, 1907, for \$300, and a note payable to E. C. Marks, signed B. C. Agee, by "T," it being stated by the Government that these documents did not refer to any count in the indictment. It was admitted that both documents are entirely in the handwriting of the defendant and that by the cashing of the memorandum check for \$300 on June 29, 1907, \$300 of the depositor's money was taken from his account and placed to the credit of the account of B. C. Agee. The memorandum check was marked Government's Exhibit 44½ and the promissory note of the same date was marked as Government's Exhibit No. 45.

Witness continuing: No part of the note has ever been paid. On the back of the note there are two notations—one is "Interest paid to June 29, 1908, \$21" and "Interest, \$21 paid to June 29, 1909." I think I got that interest; I did not know that my money had been loaned to Mr. Agee until I got the note some time after the bank was closed. But I did know that interest was being paid upon it. I think it appeared in the bank book, but I thought the bank was paying interest, because it was put in the book.

Witness continuing: The memorandum check of date August 10, 1909, for \$300 marked "A. M. Kelsay," and a promissory note for \$300 of the same date, due on demand, signed "A. M. Kelsay, by T." I have ex-

(Testimony of Edward C. Marks.)

amined these; I first saw this note when I got it out of the bank a little over a year and a half after the bank was taken over.

The Government offered and there was received in evidence the memorandum check and the note, the defendant admitting that they were in the handwriting of the defendant. The memorandum check was marked Government's Exhibit 46, and the promissory note was marked Government's Exhibit 47.

It was admitted that on August 10, 1909, by the cashing of this memorandum check \$300 was taken from the account of the depositor and placed to the credit of the account of A. M. Kelsay.

Witness continuing: The memorandum check of date January 29, 1910, marked "Loaned to Agee," \$937.52, and a promissory note of the same date for the same amount signed T. R. Sheridan; I have examined these and they first came into my possession when I got the other note. I think, however, that the memorandum checks were left in the book when the book was balanced each time. I didn't really know what the memorandum checks were and I didn't know that I was loaning the money to Agee and to Sheridan.

It was admitted that the memorandum check and the note are both entirely in the handwriting of the defendant, with the exception of the printed matter. The Government offered and there was received in evidence the memorandum check and it was marked as Government's Exhibit 48. The note of the same date was re-

(Testimony of Edward C. Marks.)

ceived in evidence and marked as Government's Exhibit 49. It was admitted that by the cashing of this memorandum check on January 29, 1910, \$937.52 of the depositor's money was taken and placed to the credit of B. C. Agee.

Witness continuing: I was a member of the firm of Marks Brothers, and we were engaged in the farming business about four miles from Roseburg.

It was admitted that the memorandum check of date December 4, 1910, and the promissory note of the same date both in the amount of \$3000 are entirely in the handwriting of the defendant and the Government offered, and there was received in evidence the memorandum check and the note. The memorandum check was marked Government's Exhibit 50 and the note was marked Government's Exhibit 51.

Witness continuing: I received the note at the same time I received the others. In regard to the release of date June 20, 1911, containing a release for \$300 loaned to Agee, \$300 loaned to Kelsay, and \$937.52 loaned to Sheridan, I have examined the release and state that I signed it. I got this letter and took it to the bank when I went into the Douglas National Bank. After I received this letter, some few days afterwards, I think, and I asked Mr. Sheridan about the matter. He said "it is all right, sign it." He said, "Those fellows are trying to get me in some little trouble;" and he said "If you will sign it, it will be a favor of you;" and I never paid much attention to it, and I signed it, and

(Testimony of Edward C. Marks.)

if I am not mistaken, I left the letter at the bank and he mailed it for me. The other release for \$3000 signed by Marks Brothers I did not sign, but I believe it was signed by my brother J. E. Marks who is now at Roseburg.

It was admitted that by Government's Exhibit No. 50, the memorandum check \$3000 was on December 13, 1910, taken from the account of Marks Brothers.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I received these memorandum checks as my bank book would be balanced. I could not tell you the exact dates. It would be every three or four months; this was back in 1910. In regard to the loan to Agee, I did not know what that meant. In 1910 I received a memorandum check that told me that Sheridan had loaned to Agee the sum of \$937.52 out of my deposit account and had charged it to me; I could read that, and I expect I did, but I did not understand what it was meant; I did not understand the meaning of it; I did not understand what it meant; I never gave it much thought; I never got any interest; I never paid any attention to it. When the interest began to come I thought it was from the bank and I expected that the bank had loaned it to Agee and charged it to me; but the bank had been paying me no interest before this; I supposed the bank was paying interest on these loans and that the bank had loaned the money to Agee; I did not know where the interest was coming from. In

(Testimony of Edward C. Marks.)

regard to the loan to Sheridan on December 3, 1910, of \$3000 charged to the account of Marks Brothers, I was a member of the firm at that time and got that deposit slip in the bank book; when I got this letter from the bank examiner I went in to see Mr. Sheridan; it was a few days after I received it. I found him in the Douglas National Bank; I gave it to Mr. Sheridan; there was nobody else present in the room; the conversation was entirely between myself and Mr. Sheridan; I asked him about the letter and what it meant; I could read and I understood the letter; I never did give him authority, but I signed it with his recommendation to sign it; he said that somebody was trying to make him trouble, and I supposed it was Mr. Goodheart. That is what he told me. He said that they were trying to get him into trouble. Mr. Sheridan had not been to see me about it and had not written to me; I went out of my own accord to see Mr. Sheridan. It probably was agreed between my brother and myself that he should sign the other release; I told him to take the letter to Mr. Sheridan; I suppose we talked it over, but we did not sign it there or agree to sign it, but I told him to take it and give it to Mr. Sheridan; I don't know when it was signed; I did not know that my brother had signed it; I don't believe he ever told me that he did sign it, but I suppose he attended to the business; he might have told me but I don't think he positive did tell me; I told him to take it and see Mr. Sheridan and I suppose it was signed; he never told me he signed or not, but I

(Testimony of E. E. Haines.)

expect he did; I never asked him whether he signed it or not.

The defendant offered in evidence the release of E. C. Marks and it was received and marked as defendant's exhibit 9.

The defendant offered in evidence the release of Marks Brothers and it was received and marked as defendant's exhibit 10.

E. E. HAINES,

A witness called on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION BY MR. REAMES.

I live at Elkton, Oregon, and am a mail carrier; I have lived there for 52 years and have known Mr. Sheridan as long as I can remember; I have been a depositor of the First National Bank of Roseburg for 16 or 18 years.

The Government offered and there was received in evidence the memorandum check of date April 6, 1908, for \$2000, and a promissory note of the same amount and same date, the note being signed by T. R. Sheridan; the defendant admitting that the note and the memorandum check are in the handwriting of the defendant, the Government stating that these documents were offered for the purpose of proving intent. The memo-

(Testimony of E. E. Haines.)

random check was marked as Government's Exhibit No. 52, and the note was marked as Government's Exhibit 53.

It was admitted that by means of this memorandum check on the day it bears date, April 6, 1908, \$2000 of the depositor's money was taken from the account of the depositor E. E. Haines and is represented by the \$2000 note of the same date.

Witness continuing: This is the first time I ever saw the note in my life; I never seen it before; the memorandum check I suppose is one I got; I say this is the first time I ever saw this note; the memorandum check I suppose is the one that was sent to me two or three months or more after this date; I don't remember how long; it was sent to me after the date of the memorandum; the note has never been paid; I never had any conversation with Mr. Sheridan relative to the loaning of that money; I did have one conversation with him; I do not remember the date; there was a little talk about the bank loaning some money that was there and I think, if I remember right, it was about fifteen or twenty days after this date of this memorandum check; I had not got the memorandum check yet and knew nothing about it; I was talking of loaning one of my wife's uncles a little money on a piece of land that I did not know. I kind of thought that he wanted—anyway, I went into the bank and asked him (Mr. Sheridan) about the land—I knew he would know about it, and he said the land he guessed was worth what he wanted to borrow on it, and not any more, and went on to say if he did not pay

(Testimony of E. E. Haines.)

interest for a year or two I would be out of the interest and I kind of did not want to let him have the money, because I did not think—well, anyway he said it might be worth it. He said the land was probably worth about what the man wanted and not any more, and he said “you are keeping most too much money here, and you ought to have it earning something.” And he said, “the bank will take your money;” and he said, “they could loan it—oftentimes men come in here that are good men, and want to borrow for a year or more;” and he said “it is short loans the bank wants and the bank will loan your money for 8% and they will give you seven, keep one per cent for their trouble.” But I did not tell him to loan it and that was after this memorandum check was dated; that was just about all the conversation there was about it; I never talked with him afterwards about it; the first I knew my money was loaned was when I got this memorandum check, and I think I got a statement from the bank either in July or August, I can’t remember just when that did come; there was a statement came with it but I cannot find the statement. It might have been about April 6, 1908, but the bank book will show it. The memorandum check was in the statement that was returned to me; I did not understand one thing in the world about it; I just supposed the bank had loaned money as they said they would, and I did not understand it at all. Did not know no more what it meant than nothing in the world; I never did know until now that I had Mr. Sheridan’s personal note for the amount; I received a letter from the Bank Examiner

(Testimony of E. E. Haines.)

of date June 20, 1911; after I got this letter I did not know no more that the money was loaned to Mr. Sheridan than nothing in the world; I did not sign the release.

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I never did know that my money was loaned to T. R. Sheridan until I received a letter from Mr. Goodheart; I did not know it was loaned to Sheridan at all; I received this memorandum check some time in 1908 in my bank book; it had on it these words—"Loaned T. R. S. Charge E. E. Haines." I did not know. He was president of the bank and I did not know but what that was some way they had of keeping account of them; I say I did not know—I am honest about it; I knew what loaned meant but there wasn't a word said about him borrowing it and did not think about it. Sheridan had said that the bank would take it, but I never give him authority to loan it at all; I had made no arrangement to loan it. I had not given any right to loan it and I did not think much more about it; I tried to loan it myself and I did loan some and checked on the bank; when I received this memorandum check I supposed that T. R. S. meant T. R. Sheridan; I did not understand at that time that it meant that T. R. Sheridan had loaned \$3000; I thought when I received the check that the bank had loaned the money; I had an idea it had been loaned but not to Sheridan; I did not make any complaint during

(Testimony of John E. Marks.)

the year 1908, 1909 or 1910, because I thought it was just as they said it would be, and it is a fact when I received the memorandum check I supposed that the bank had loaned it as it said it would.

The defendant offered and there was received in evidence a letter under date of November 16, 1911, written by H. P. Marks to T. R. Sheridan; the letter was marked Defendant's Exhibit 11.

JOHN E. MARKS,

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live at Roseburg and have lived there fifteen years; I am 28 years of age and a member of the firm of Marks Brothers. During 1911, the firm was composed of J. E. Marks and E. C. Marks. I have banked with the First National Bank of Roseburg for over eight years; the account of Marks Brothers was opened first and afterwards I had an account there in my own name; I knew Mr. Sheridan but I never had any talk or conversation with him about the loaning of my money for me, and never wrote to him or gave him any authority to loan my money; I did not know at the time that any of my money was loaned and I first found it out when the bank book came back.

BY MR. REAMES: This is offered simply for the purpose of showing intent.

(Testimony of John E. Marks.)

Witness continuing: I first came to discover that I did not have any money in the bank when I traded an automobile and gave the automobile company a thousand dollars to boot on the car, and I went to get the money and they said I did not have any,—it was loaned out. I never did give Mr. Sheridan any authority to loan any money from the Marks Brothers account. In regard to the check of date December 13, 1910, being Government's Exhibit No. 50, for \$3000, I have now examined it and say that I never authorized the execution of that check. In regard to Government's Exhibit No. 51, a promissory note of date December 3, 1910, for \$3000, due one year after date to Marks Brothers, and signed by T. R. Sheridan, I never did see that note until a few months after its execution. I may have seen it when the trouble first occurred at Roseburg, but not that I know of. My brother might have done the business,—I had nothing to do with it. In regard to the photographic copy of the release of date June 20, 1911, signed by Marks Brothers, I have examined this and I signed that release. At the time this release came to us we did not know what it was,—we did not know what it meant, what was the idea of it, and my brother and I had a short conversation, and after the talk I had with my brother I took the release to Mr. Sheridan and found him in the Douglas National Bank; I handed the release to Mr. Sheridan and asked him what about this, and he said "sign it, it is all right;" and I signed it and put it in the envelope and Mr. Sheridan says "I will mail it for you."

(Testimony of John E. Marks.)

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I did not know the money was loaned until I saw it marked in the book "loaned." The book said \$3000. I could not just tell you when it was wrote up; I don't know that I ever seen it. My brother kept the bank book; I did not know what year it was loaned. I have here the Marks Brothers' bank book (produced by the United States attorney). This is the bank book and this item here under date of December 13, "loaned \$3000" is the one to which I refer. The book apparently was balanced in January, 1911, and shows that it was written up at that time. My brother always took the book from the bank; I would never see the bank book, he always kept the bank book and he would go and get it; when my brother got the bank book he said \$3000 had been taken out and I did not inquire how it had been taken out; I never did see the memorandum check, Government's Exhibit No. 50, for my brother attended to that part of the affair; I did not know to whom the money had been loaned and made no inquiry. It did not occur to me to be queer that I having given no authority to make the loan that I should make no inquiry where the loan had been made. This Defendant's Exhibit No. 10 I received through the mail and conferred very little with my brother about it. We both read it over. I would not deliberately sign anything that was untrue but I did not know what I was signing. If I signed anything that was untrue it would be because I did not know what I was signing. I didn't

(Testimony of Mrs. W. T. DeWar.)

know what this meant when I signed it. I can read, although I am not very well educated. My brother keeps the accounts and I did not look after them or ever examine them. We talked over the release together and I read it before I talked to my brother. I could not tell you who opened it first when we received it through the mail. We did not go over the language in the release. Now as you read me the release I see that I must have understood it, but I did not really understand it and that is the reason I took it to Mr. Sheridan and asked his judgment; I did not understand it. The loan was not authorized by me. I did not authorize him to loan; the language of the release says that it was authorized but I never did authorize him. I took it to Mr. Sheridan and asked him. Mr. Sheridan said it was all right and for me to sign it, but I did not authorize him; if I had understood what it meant and signed it then of course I would have thought that it was true; I thought the bank was behind everything the man was doing; no part of the \$3000 has ever been paid by the defendant; the interest has been paid on it once.

MRS. W. T. DeWAR.

A witness called on behalf of the Government, testified as follows:

DIRECT EXAMINATION BY MR. REAMES.

I live at Gardner and was a depositor in the First National Bank since the year 1906 or 1907. I never did

(Testimony of Mrs. W. T. DeWar.)

have any talk with Mr. Sheridan about loaning my money for me.

BY MR. REAMES: This is offered simply for the purpose of proving an intent to defraud.

Witness continuing: We talked a few words in the bank; it was shortly before the money was take out and Mr. Sheridan and I were talking there in the bank and the money was there of course; and I was not getting any interest from it and we were talking there; I don't remember just how it came up, but anyway in our conversation he advised me to put the money on interest; he said they were having calls every day and he said that they were having calls every day at the bank there for money and that it would be just as good as gold, and by all means he said, put it on interest and get some good out of it; but in our conversation I told him, I said that I must have,—must be sure that nothing but good security was taken; I said "it must be a good safe loan and I must have but good security. I must have a conversation with my husband before I do anything, as I would not put out a dollar without his consent." And of course I was away from home at the time and he assured me at the time if I allowed them to put the money out there would be nothing but good security taken.

The Government offered and there was received in evidence the promissory note of A. M. Kelsay signed by T. R. S. of date November 26, 1909, the defendant admitting that the note with the exception of the printed

(Testimony of Mrs. W. T. DeWar.)

portion thereof is entirely in the handwriting of the defendant. It was marked Government's Exhibit 54.

Witness continuing: The first time I ever saw this note, Government's Exhibit 54, was in the spring of 1912, or 1913. My husband happened to be in Roseburg and I got it from him. In regard to the letter of date December 21, 1909, I received it on or about the date of the letter.

It was admitted that the letter is in the handwriting of and signed by the defendant and the Government offered it in evidence and it was received and marked as Government's Exhibit No. 55.

Witness continuing: I did not receive any memorandum check from the bank on account of this transaction and had no notice whatever from the bank. I never had any other conversation with Mr. Sheridan other than what I have told; no part of the money has ever been repaid.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: The first time I ever talked with Mr. Sheridan about loaning my money was shortly before the note is dated, or just about the time; just shortly before I received the letter from Mr. Sheridan,—I think perhaps as much as a month before, or half a month before. I had a talk with Mr. Sheridan before the loan was made; I did not know that Mr. Sheridan had loaned the money; he did not state that he had loaned the money, he said the money would simply draw

(Testimony of Mrs. W. T. De War.)

interest; he said the party had been selected, but I had no notice the money was drawed out. I did not go back again and I received interest for one year in 1910; I had nothing to tell me the money was loaned; he said the money would begin drawing interest and that the party was not there to get the money. I understood that Mr. Sheridan was taking this money for the bank. I did not know my money was loaned. I supposed the bank would pay the interest; I never had any notice that the man had taken the money; I had not checked the money out of the bank and I supposed when Mr. Sheridan or the bank had found a good loan with good security they would request me to take the money out, but as I had not taken the money out I considered the bank was good for the money. He did not tell me in this letter that the loan was practically made and I did not so understand it; I got the note either in 1912 or 1913, I would not be positive just which; I testified in my case against the First National Bank on this note as a witness. I did not try to sell this note to several parties. I did not consider the note was worth anything. I would not have wanted to have bought such a note, and I did not offer it for sale. I know Mr. George Crane. I did not have any conversation with him in Roseburg in 1911 referring to this note in which I said to him that I would like to sell the note. I know Mr. Mr. W. H. Fisher of the First Trust Bank of Roseburg. I knew him when I met him. I did not shortly after I received this note go into his place of business at Roseburg and offer to sell it. I never had any con-

(Testimony of Mrs. Tim D. Barry.)

versation with Mr. Fisher whatever except just to speak to him in passing.

**MRS. TIM D. BARRY,**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live at Dothan in Douglas County, Oregon, about fifty miles from Roseburg; I know Mr. Thomas R. Sheridan and have known him for many years; I began doing business with the First National Bank of Roseburg in July, 1908; I had a talk with Mr. Sheridan about loaning my money for me; it was about July 14th I went into the bank to see Mr. Sheridan and I deposited some money that day, and I spoke to Mr. Sheridan about loaning my money and he was to give me seven per cent interest; I think there was something over \$2000; I asked him to lend it and I suppose he loaned it, I don't know.

**BY MR. REAMES:** This is offered for the purpose of proving an intent to defraud.

The Government offered and there was received in evidence a memorandum check of date June 28, 1909, against the account of Mrs. Tim D. Barry at the First National Bank of Roseburg, Oregon, in the sum of one thousand dollars; the defendant admitting that the same

(Testimony of Mrs. Tim D. Barry.)

is in the handwriting of the defendant. It was marked Government's Exhibit No. 56.

The Government offered and there was received in evidence a memorandum check of date August 29, 1908, the defendant admitting that it was in the handwriting of the defendant and the same was received and marked as Government's Exhibit 57.

The Government offered and there was received in evidence a promissory note of date December 15, 1909, the defendant admitting that the document was in the handwriting of the defendant, and signed by him. It was marked Government's Exhibit 58.

Witness continuing: In regard to Government's Exhibit No. 58 being a promissory note of date December 15, 1909, signed T. R. Sheridan, due one year after date, in my favor, I have now examined it, and I never saw the note before. In regard to the two memorandum checks, Government's Exhibit No. 56, and Government's Exhibit No. 57, the first for one thousand dollars, and the other for two thousand dollars, these were sent to me through the bank in my bank book. I think that is the way they came; I would often speak to Mr. Sheridan about the loans but I just can't remember the conversation; I always looked to Mr. Sheridan for my money,—I looked to him as the president; I always looked to him for the money.

It was admitted that the money represented by these two memorandum checks, Government's Exhibit No. 56, and Government's Exhibit No. 57, that by the

(Testimony of Mrs. Tim D. Barry.)

means of these that amount of money came out of her account on that date.

It was admitted that a memorandum check of date March 18, 1910 for \$500 against the account of Mrs. Barry is entirely in the handwriting of the defendant and the same was received and marked as Government's Exhibit No. 59.

It was admitted that on March 18, 1910, five hundred dollars came from her account and went to the account of A. M. Kelsay.

It was admitted that the promissory note of date March 18, 1910, for five hundred dollars is entirely in the handwriting of the defendant, and that the defendant signed thereto the name of A. M. Kelsay, by T.

The Government offered the note in evidence and it was received and marked as Government's Exhibit No. 60.

It was admitted that a memorandum check signed "Mrs. T. D. Barry" signed "Charge Mrs. T. D. Barry," "Loaned," is entirely in the handwriting of the defendant and the same was offered by the Government and received in evidence and marked as Government's Exhibit No. 61.

It was admitted that the promissory note of T. R. Sheridan of date November 28, 1910, was entirely in the handwriting of the defendant, and the same was offered by the Government and received in evidence and marked as Government's Exhibit No. 62.

Witness continuing: I saw the memorandum checks

(Testimony of J. D. Cooley.)

as the bank book was returned to me, but I don't know as I ever saw the notes; I have now examined the note, Government's Exhibit No. 58, and I don't hardly think I ever saw that; I don't think so. No part of these notes have ever been paid; Mr. Sheridan never did tell me to whom he had loaned the money. In regard to the release from the Bank Examiner of date June 20, 1911, I received this at my home, so I brought the letter down to Mr. Sheridan for I knew I had the five thousand dollars in the bank, and in that way I brought the letter to Mr. Sheridan and asked him about it, and he said it was a matter of form and I signed it; I knew there was five thousand dollars that was there in the bank.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I was drawing interest from the money and assumed that Mr. Sheridan had loaned it according to the agreement; he had never sent any of the notes to me when he had made other loans for me; I suppose a person is careless in doing those things, but I think that is really the way I did.

J. D. COOLEY,

A witness called on behalf of the Government testified as follows:

#### DIRECT EXAMINATION BY MR. REAMES.

I live at Agnes in Curry County, Oregon, and have lived there for fifteen years. I made a trip to Alaska

(Testimony of J. D. Cooley.)

in the fall of 1907 and returned in the fall of 1909. I have been a depositor of the First National Bank of Roseburg since 1905. I think I first wrote to Mr. Sheridan about loaning my money; I wrote him from Alaska in June, 1909; I did not have any talk with Mr. Sheridan about loaning my money before I went to Alaska.

The Government offered and there was received in evidence a letter dated at Fort Liscum, Alaska, June 4, 1909, addressed to Mr. T. R. Sheridan, and signed J. D. Cooley, and the letter was received and marked as Government's Exhibit No. 63.

It was admitted that a promissory note of date January 2, 1909, and one of date January 2, 1908, are both in the handwriting of Mr. Sheridan. The Government offered both of these in evidence and they were received and marked. The note of January 2, 1908, was marked Government's Exhibit No. 64, and the note of January 2, 1909, was marked Government's Exhibit No. 65.

Witness continuing: I first saw these notes in the office of the United States Attorney, and prior to that time I had never seen them. I received a statement from the National Bank Examiner which is the letter of date June 20, 1911. I signed the release at the bottom. I read it before I signed it. I presume I read the entire letter, although there is a portion of it that I don't remember, but I presume I did. I think I did. I was at my home when I signed it and I returned it to the

(Testimony of J. D. Cooley.)

National Bank Examiner. I gave him no authority at all except the authority I gave him by letter.

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I gave Mr. Sheridan permission to use the money so if he did use it he did it with my authority.

### REDIRECT EXAMINATION BY MR. REAMES.

Witness continuing: The amount was not stipulated that I gave him authority to draw out. I never gave him any direct authority, although it might have been implied. I had a talk with Mr. Sheridan about this matter about the money in Roseburg and I came back and I told him I was thinking of going into some business here in Portland,—how was it going to be about my drawing? He told me to go ahead and draw my checks just as I had always done and they would be honored; there was nothing said as to whether the money was there or not, or who had the money.

The defendant offered in evidence the bank book identified as the bank book of Marks Brothers. It was received and marked as Defendant's Exhibit No. 12.

(Testimony of George P. McNamee.)

**GEORGE P. McNAMEE**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live in Portland, and have been bridge foreman on a bridge gang for the O. R. & N. Railroad Company. I formerly lived in Douglas County and lived there in 1906, but I was there about fourteen or fifteen years and was a depositor of the First National Bank of Roseburg in January, 1895, but that account was all checked out; I checked my account out there a couple of times; I had a deposit in the bank in 1908 or 1909; I never talked with Mr. Sheridan about loaning my money but we had some correspondence about it.

The Government offered and there was received in evidence a letter of date July 23, 1909, written to the witness by the defendant, the defendant admitting that the letter is in the handwriting of the defendant. It was received and marked as Government's Exhibit No. 66.

Witness continuing: The letter of date February 3, 1911, from Biggs, Oregon, I wrote that letter to Mr. Sheridan and sent it to him.

The Government offered and there was received in evidence the letter identified by the witness, of date February 3, 1911, and it was received and marked as Government's Exhibit No. 67.

(Testimony of George P. McNamee.)

The Government offered and there was received in evidence a letter of date February 8, 1911, admitted by the defendant to be in his handwriting, and it was received and marked as Government's Exhibit No. 68.

The Government offered and there was received in evidence a memorandum check of date February 9, 1911, for the sum of \$2956.60, and a promissory note, the defendant admitting that the memorandum check and the promissory note are entirely in the handwriting of the defendant. The memorandum check was marked Government's Exhibit No. 69, and the note 70.

Witness continuing: In regard to the promissory note, Government's Exhibit No. 70, the first time I ever saw it was when you showed it to me just now.

It was stipulated and conceded that the United States Attorney through his agents received these notes from the bank; that these notes were in a pigeon hole in the bank and that the Government officers took them from this pigeon hole; that they were enclosed in an envelope with the party's name on the envelope; that the pigeon hole would be lettered with the initial of the name of the depositor; for instance, Adams would be under "A," and Brown would be under "B," and the envelope containing his particular note would have his name on it.

Witness continuing: The memorandum check of date February 9, 1911, being Government's Exhibit No. 69, this is the first time, right now, that I ever saw it.

(Testimony of George P. McNamee.)

It was admitted that by means of this memorandum check of February 9, 1911, that \$2956.60 of the depositor's money was taken from the account of the depositor.

It was admitted that the letter of date June 18, 1912, is entirely in the handwriting of the defendant; it was offered by the Government and received in evidence and marked as Government's Exhibit No. 71.

Witness continuing: I received this letter from Mr. Sheridan; it was about a year ago I think it was, when I was summoned before the Grand Jury, that I first found out that I had Thomas R. Sheridan's note for my money; that was in February, 1914; I received a letter from Mr. Goodheart the Bank Examiner; I knowed my money had been withdrawn from the bank, but not prior to the time I got the letter from Mr. Goodheart; before I got that letter from Mr. Goodheart I did not know that my money had been loaned; no part of the money has ever been repaid.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I got a letter from Mr. Goodheart which is the one you showed to me, and I signed the release at the bottom.

The defendant offered and there was received in evidence the letter of Mr. Goodheart with the attached release and the same was received and marked as Defendant's Exhibit No. 13.

(Testimony of E. P. Preble.)

Witness continuing: The letter I received from Mr. Goodheart had a statement of what had been loaned; the same amount was set out as represented by the notes; it stated that the amount has been withdrawn and to whom it had been loaned, and this certificate was down below and I signed it.

**REDIRECT EXAMINATION BY MR.  
REAMES.**

Witness continuing: I never had any conversation with Mr. Sheridan about loaning my money and all of the authority that had been given had been given by writing and in that one letter.

**E. P. PREBLE,**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live at Roseburg and have lived there for 27 or 28 years; I am a farmer; I have known Mr. Sheridan for 27 years and was one of the depositors of the First National Bank of Roseburg. I had a talk with Mr. Sheridan about loaning money; he spoke to me one day about why I did not loan it. I told him I would like to use it; he told me he could loan it on short loans, that I could get it most any time. I told him that I would not do anything until I went home and talked with my

(Testimony of E. P. Preble.)

wife, and I would let him know when I came over again; probably a couple of weeks I came in again and he handed me a note, a promissory note.

BY MR. REAMES: This is offered for the purpose of proving intent.

The Government offered and there was received in evidence a memorandum check of date February 21, 1910, for \$3000. It was received and marked as Government's Exhibit No. 72.

The promissory note of date February 8, 1910, due three months after date, signed by John Servia and T. R. Sheridan, written in favor of E. P. and Emily Preble for \$3000, was admitted to be, with the exception of the printed matter, entirely in the handwriting of the defendant, and that the defendant wrote the name of John Servia as well as his own upon the note.

The Government offered the note in evidence and it was received and marked as Government's Exhibit No. 73.

Witness continuing: The note must have been drawn up about the time I had the talk with Mr. Sheridan; he gave me a note at that time; he said he had let the money out and he had O. K.'d it to make it good to me. I asked him one day who John Servia was, and he said he was a friend of his; that is about all that was said that day; I asked him again where he was and the last he heard of him was in Montreal, I believe. I never saw the man that I know of. The memorandum

(Testimony of Joseph Mosthaf.)

check that has been introduced in evidence I signed myself. I think I have told all of the conversation.

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: At the time I drew this check for \$3000 I delivered it to Mr. Sheridan,—that is, he drew the draft himself and I signed it and he gave me this note and I took it away, and that is all there is to it.

**BY THE COURT:** Unless the defendant abstracted this amount from the bank I will sustain the objection. It is utterly immaterial.

The defendant offered and there was received in evidence the letter and release from the Bank Examiner to the witness Mrs. Barry and the same was marked as Defendant's Exhibit No. 14.

### JOSEPH MOSTHAF,

A witness called on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES.

I live at Riddle; am a farmer, and was one of the depositors of the First National Bank of Roseburg; I had a conversation with Mr. Thomas R. Sheridan relative to the loaning of some of my money; I was in Roseburg and went to the bank, I should say about in Jan-

(Testimony of Joseph Mosthaf.)

uary, 1908, and I had something over \$3000 in the bank, exactly how much I don't know; it was something over \$3000, and I spoke to Mr. Sheridan to put it out on good security if he got a chance, and he said he would. About two or three weeks, I should say about the 20th of February or thereabouts, he wrote me I had some school bonds,—Roseburg school bonds for \$3000; I think I went down and told him to keep them there and when they came in it was bonds came in at different times, two, three, and five years, I think it was. Well we had different business and in 1911 one of them bonds came due. I was down about January or thereabouts and I went in to Mr. Sheridan and I told him when the bonds came due,—a bond of \$800, to loan it out again for good security, the same as these school bonds, and he said he would.

It was admitted that a memorandum check of date February 24, 1911, and a promissory note are entirely in the handwriting of the defendant, and the Government offered the memorandum check in evidence and it was received and marked as Government's Exhibit No. 74.

It was admitted that by this memorandum check, \$800 on this date was taken from the account of Mr. Mosthaf.

The promissory note of date February 22, 1911, signed by the defendant Sheridan in the note of \$800, payable to the order of Joseph Mosthaf were received and marked as Government's Exhibit 75.

(Testimony of Joseph Mosthaf.)

Witness continuing: In regard to the check of date February 24, 1911, I got it very shortly after the 25th. —I think it came. It might come in the bank account,—what I mean with the bank book. I did not go to see anybody about it; I might have wrote Mr. Sheridan in regards to it,—I would not say I did. I have got no letter any more and I don't know, but anyhow I got a letter from Mr. Sheridan in which he informed me that he put my money out on good security; I mislaid or lost the letter; I do not know where the letter is now,—I looked for it and I cannot find it. I have mislaid it I guess. I did not go down and talk to Mr. Sheridan about it. In 1911, I spoke to Mr. Sheridan again,—that is before the school bond became due. Later I had another conversation with Mr. Sheridan. I got a letter from the Bank Examiner Mr. Goodheart, I guess is his name; he wrote me a letter,—I don't know the exact words; I read the letter and of course I could not say now, the letter seems kind of funny; I could not understand it, so I went down in the bank,—in the Douglas National Bank, and saw Mr. Sheridan about it, and showed it to him, what the letter meant, and he told me it is merely a matter of form and to sign it, which I did. He talked a little over affairs and so the way I stated before, and afterwards I asked him in regard to the money, the \$800, and he said he let it out on good security, and if I would take his personal note, which I did; he gave me his personal note then; this was after the date of the Bank Examiner's letter that he gave me the note; he told me to come back; I was

(Testimony of Joseph Mosthaf.)

coming after the train; the train comes at 1 o'clock I think and he told me to come to the bank, and I went out of the bank and around town and attended to some business, and he told me to come back at 4 o'clock and he delivered the note; the note is Government's Exhibit No. 75, dated February 22, 1911. This was the first time that I knew that I had Mr. Sheridan's note for my money. I really did not understand. I had one conversation with him about the school bonds and other conversations, but not pertaining to this matter; but before I received the Bank Examiner's letter I did not have any other conversation with him about loaning my money to my recollection. The release of date June 20, 1911, is the one that I signed; no part of the note of \$800 has ever been paid.

The release signed by Joseph Mosthaf was introduced by the defendant in evidence and was received and marked as Defendant's Exhibit No. 15.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I had some money in the bank in 1908 and I told him to loan it out for me, and he said he had some school bonds; later on he informed me he had them school bonds; the school bonds were all right and I did have them and got interest on them, and they ran along until the school bond of \$800 became due, and then I told him to loan the money out again, but to loan it on good security; I accepted the note when he gave it to me when I came down with the letter from the National Bank Examiner.

(Testimony of A. William Wende.)

The defendant offered and there was received in evidence a letter of date March 4, 1912, marked defendant's Exhibit No. 16.

A letter of date October 5, 1915, marked Defendant's Exhibit No. 17.

A letter of date November 11, 1912, marked Defendant's Exhibit No. 18.

The witness admitted the authorship of the letters.

A. WILLIAM WENDE,

A witness called on behalf of the Government, testified as follows:

#### DIRECT EXAMINATION BY MR. REAMES.

I live in Roseburg; am 63 years of age, and have lived there 19 years, and am a farmer by occupation; I have known Mr. Sheridan ever since I have been there, and during all of this time have been a depositor in the First National Bank of Roseburg. I had a talk with Mr. Sheridan about ten years ago; I asked him that my money stood there, and I would like if he wants to see that I could get some interest in some way, and he said yes, he could fix that all right, but I asked him right away if the bank would be responsible and he said yes, to me. And on that account I loaned it out and I got my papers there in little checks of \$25, \$50 and so on, little loanings, and he explained it to me and I was satisfied because the bank's stamp is always on it. And

(Testimony of A. William Wende.)

later on as Mr. Goodheart spoke with me, he went out on my place, Mr. Goodheart, and he told me if I allowed Mr. Sheridan to loan my money out, and I said yes, I did. That is what I did and I told him the circumstances too, and Mr. Goodheart he told me he wanted to write a letter to me, and so I got that letter, and I went to Mr. Sheridan about that letter before I signed it. Mr. Sheridan was in the bank at the time,—the Douglas Bank, or anyhow he was an officer, and I seen him, he was sitting there, and then I told him what I should do in that case, and he said, “did you sign that already?” “No,” said I, “I haven’t signed it yet.” “Well, you could sign that, that is just the same, I sell pretty soon some timber claim and then I pay the money back,” and that is all right and I sign it in the presence of Mr. Sheridan in the bank in Douglas Bank, and he took the letter as it was and fold it up and put in the envelope and put in his pocket. He said he want to put it in the letter box and I trust Mr. Sheridan he will do all what is best or honest, so I have no idea which the way it came out.

The memorandum check of date April 17, 1909, and the promissory note of the same date were both admitted to be in the handwriting of the defendant, with the exception of the printed matter, and that by the memorandum check of date February 17, 1909, \$1010 of the depositor’s money was taken out of his account.

The Government offered the memorandum check and the note in evidence and they were received,—the

(Testimony of A. William Wende.)

memorandum check was marked Government's Exhibit No. 76, and the note was marked Government's Exhibit No. 77.

Witness continuing: No part of the note has ever been paid. In regard to Government's Exhibit No. 76, the memorandum check I never seen that at all except when Mr. Coshow gave me the whole bunch, and this note was there, that I examined because I didn't know anything about it, so I trust it would be all right, but I have never seen this. Mr. Coshow is the lawyer who gave it to me, that is the first time I ever saw it.

It was admitted that Coshow is the attorney for the trustee of the bank.

Witness continuing: Mr. Coshow gave me that memorandum check after the Bank Examiner had left. I got the whole bunch at one time. I did not have my bank book. I asked many years for it,—I never could get my bank book back; asked everywhere, Mr. Sanford and Douglas National Bank, and Mr. Joe Sheridan and I asked him if he looked in the vault of Douglas Bank and he said "That might be possibly in my brother's desk." Mr. Joe Sheridan he looked for that bank book and I demanded it many times. This release you showed me is a photographic copy of the one I signed at the request of Mr. Sheridan. I can read English but there are some words I can't quite get to it.

(Testimony of A. William Wende.)

### CROSS EXAMINATION BY MR. FULTON.

The Goodheart letter and release was offered by the defendant and received and marked as Government's Exhibit No. 19.

Witness continuing: The note and memorandum check bear date in February, 1909; before we had a little accounting in the back part of the First National Bank, and he showed me all the little amounts that were repaid in the bank account with the bank stamp on, and these what I got later from Coshow I never seen before, and never know anything there was such a thing there. I had just one talk with Mr. Sheridan about loaning; I know nothing from notes; that was all them little notes, twenty-five dollars and so on from other people, nothing from him, I know nothing, he never told me. I told him he could loan the money; that is I asked him if there wasn't some way you could loan your money so as to get some interest on it with the request that the bank should be responsible; and he said yes, that could be arranged, and on that authority I expected him to make the loan, and that is the only talk I ever had with him. I know nothing about any payment being made on the note. I did receive one payment of five hundred dollars on the note after the consolidation of the bank. Mr. Sheridan he was in California and I told Joe Sheridan I needed the money and Mr. Sheridan sent me it and I got the benefit of it.

(Testimony of A. M. Kelsay.)

**REDIRECT EXAMINATION BY MR.  
REAMES.**

Witness continuing: I did not see the note—that was all translated through Mr. Sheridan at the time of the payment; I only got \$500; it might have been a payment on another note of T. R. Sheridan in my favor of date May 6, 1907.

**A. M. KELSAY**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live in El Centro, California; I formerly lived in the State of Oregon in Harney County during the years 1909, 1910, and 1911; during this time I was in the sheep business, connected with Mr. T. R. Sheridan, and he was financing me; I considered that we were interested in the sheep business together. I never authorized or told Mr. Sheridan to sign my name to any notes; I never had any conversation with Mr. Sheridan relative to any notes; I do not know how many notes, if any, he signed for me, or their amounts, and I never paid any note that he signed for me. In regard to Government's Exhibit number 47, a demand note dated August 10, 1909, signed A. M. Kelsay, T., \$300; demand note of January 25, 1910, A. M. Kelsay, T., for \$540.32, Gov-

(Testimony of A. M. Kelsay.)

ernment's Exhibit 40; Government's Exhibit 38, a note signed A. M. Kelsay by T., demand, \$745; May 10, 1910, A. M. Kelsay per T. R. S., \$700, Government's Exhibit 27; Government's Exhibit 29, note signed A. M. Kelsay, dated October 6, 1909, \$1,000; Government's Exhibit No. 60, note signed A. M. Kelsay by T., dated March 18, 1910, favor Mrs. Tim Barry, \$500; Government's Exhibit 54, note for \$3,000, payable to Mrs. W. T. DeWar, signed A. M. Kelsay per T. R. S., dated November 26, 1909; I have examined these. I first saw some of these notes when I was before the grand jury—I don't remember which ones, and the others I never saw them until now. It was understood between Mr. Sheridan and myself that he could use my name in any way that he wanted to; that he could sign any kind of a paper, use my name in any way he saw fit, but there were no particular papers or notes mentioned, only in a general way, if it became necessary to sign my name, he had a right to do that; I presume he had authority to borrow money for me; I don't just remember if I ever told him to borrow money for me; we were having quite a lot of business together; I don't know that I ever told him to borrow any money, but it was understood in a general way; I knew in a general way that Mr. Sheridan was borrowing money to finance me and I felt that he had a right, a perfect right, to use my name in that connection, and if it was done I did not consider Mr. Sheridan was doing it for his own. I cannot tell you the date of any conversation at any time or place where I ever told him to sign my name

(Testimony of B. C. Agee.)

to any notes for borrowing money and I never did pay any of the notes.

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: It appears from the books that the money that was borrowed on these notes was carried to my account and that I was given credit for it and that is entirely a legitimate transaction as far as I am concerned; and I recognized, with the understanding I had, that Mr. Sheridan had complete authority to do that—to sign my name to the notes and carry the money to my credit to any instrument he saw fit. I never questioned his authority in those respects; I have had large transactions with Mr. Sheridan and have owed him as high as \$40,000 or more, and paid it; he was financing me in my enterprises and growing out of these large transactions I had recognized his authority to do these things for me; I did not know until February, 1914, that he had done these things.

### B. C. AGEE

Recalled as a witness, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES.

In regard to Government's Exhibit number 24, a note dated May 1, 1908, payable to M. S. Doestler, signed B. C. Agee, per T., for \$469, a note of June 29, 1907, Government's Exhibit 45, signed B. C. Agee,

(Testimony of B. C. Agee.)

per T., I have examined these two exhibits and the first time I ever saw them was after the Douglas National Bank had taken over the First National Bank; I never told Mr. Sheridan to sign my name to either one of these notes; I was a partner with Mr. Sheridan.

#### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I was in partnership with Mr. Sheridan for 17 years, during which time he was financing me, taking care of my business, and carrying it on for me, and he helped me in my financial matters; at that time I relied on him almost entirely to be financed; I understand that it is proven here that this money went into my account and that I was given credit for this money; I don't know whether it was the understanding or not; he always handled the money and we attended to the ranch; he handled the money; I left that all with Mr. Sheridan.

#### RE-DIRECT EXAMINATION BY MR. REAMES.

Witness continuing: I have never paid any of these notes and I never paid any interest on them either.

(Testimony of Mrs. Elizabeth Byron.)

## MRS. ELIZABETH BYRON

A witness called on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES.

I live at Ollala, sixteen miles from Roseburg; I have known Mr. Sheridan ever since he was a little boy; I was a depositor in the First National Bank of Roseburg; I had a talk with Mr. Sheridan about loaning my money for me; my husband died in January, 1902, and it was after that that I was in the bank putting some money in, and Mr. Sheridan said to me, "You have got too much money, Mrs. Byron, lying in the bank idle." And I said, "What will I do with it—if I loan it I lose it." And he said, "Leave it here and we will use it and it will make seven per cent for you and one for the bank." I said, "All right." I did not have any further talk or agreement with him about loaning my money.

(The Government offered in evidence the memorandum check of Mrs. John Byron for \$1080.25, the defendant admitting that it was entirely in the handwriting of the defendant; it was received and marked as Government's Exhibit number 78. It was admitted that by that transaction that amount of money went out of her account and went to the account of Hanan, guardian.)

Witness continuing: I don't remember of ever get-

(Testimony of S. A. Sanford.)

ting a note for any of that money; no part of the money has ever been repaid; I knew Mr. Hanan.

### CROSS EXAMINATION BY MR. FULTON.

Witness continuing: I spoke to Mr. Sheridan about loaning my money in the bank in the year 1905; he said that I had too much money in the bank lying idle; I had \$3,000 and he said they could loan it out and make seven per cent; my husband had put it nearly all there and I put a little more there and made it three thousand dollars; it was to make one per cent for the bank and seven per cent for me by loaning it out. I supposed the bank was all right.

(The defendant offered in evidence the letter of date August 4, 1912, which was marked as defendant's exhibit number 20. The letter of date October 30, 1912, which was marked defendant's exhibit number 21; the letter of date March 23, 1913, marked defendant's exhibit number 22; the letter of date October 23, 1912, marked defendant's exhibit number 23; the witness admitting the authorship of all said letters.)

### S. A. SANFORD

Recalled on behalf of the Government, testified as follows:

### DIRECT EXAMINATION BY MR. REAMES.

I have already identified Government's Exhibit number 5 as the minute book of the First National Bank

(Testimony of S. A. Sanford.)

of Roseburg; it contains a list of the meetings held by the board of directors and the stockholders and the business transacted at those meetings. For a period of five years I was the cashier of the bank, starting in between 1905 and 1906, and am the present trustee of the First National Bank in liquidation. For the past two or three years O. P. Coshaw has been acting as my attorney in that capacity; the minute books of the corporation were accurately kept so as to show the transactions occurring at the meetings of the board of directors and at the meetings of the stockholders.

Q. Was the matter of the drawing of these memorandum checks on the accounts——

MR. FULTON: If that is your purpose in that examination I will say that we do not contend that any of these matters were taken up with the board of directors.

COURT: I don't think it is necessary anyhow under the statute.

MR. FULTON: I don't think so either.

COURT: But it is conceded they were not.

MR. REAMES: It is stipulated it is not necessary?

MR. FULTON: No, the court says it is not necessary, I don't stipulate. I don't say what my position is in that matter, I mean what the law is, but we do concede there is nothing in the minutes about it.

Q. Did the bank so far as you know ever give its

(Testimony of S. A. Sanford.)

consent to the drawing of those memorandum checks by Mr. Sheridan?

A. No, sir.

Q. And if it had given——

MR. FULTON: Now, that is objected to, the question is, what has the bank.

COURT: The board of directors are the managing officers of the bank.

MR. FULTON: I don't think they have a right to ask that question in that way. If it is material that is not the way to prove it. The board of directors, as Your Honor says, is the bank so far as exercising the powers and functions of the corporation are concerned. That is all there is of it.

MR. REAMES: I would like to ask two questions, if the Court please.

Q. Then did the board of directors at any time while you were cashier of the bank ever authorize those transactions?

MR. FULTON: What the board of directors did is proven by the minutes. The minutes we concede have nothing. I can't see why counsel insists on this, but what the board of directors did is proven by their records and they didn't do anything.

COURT: I think the records are prima facie evidence of what they did and if they contain no evidence of it the presumption will be that they did not.

MR. FULTON: Of course, we contend—our position is that so far as the board of directors are con-

(Testimony of S. A. Sanford.)

cerned they could not have given the authority to make a loan for these parties, the parties alone would give that authority. We are claiming our authority anyway from these parties.

MR. REAMES: I think anyway I will stop.

Q. Now, then, Mr. Sanford, you say you are trustee of the First National Bank. The bank is still in liquidation, is it not?

A. Yes, sir.

Q. Now, Mr. Sanford, you are acquainted with the names of those people who have testified here, you have been in the court room right along, haven't you?

A. Most of the time; yes, sir.

Q. You know who they are?

A. Yes, sir.

Q. When the Douglas National Bank took over the First National were any of those amounts represented by those memorandum checks that have been introduced in evidence carried into the accounts of the Douglas National?

MR. FULTON: Wait; don't answer that. It is immaterial whether they were or were not, Your Honor; that would be something after the fact over which we have no control, for which we would not be responsible. You have shown the record, all the facts of these transactions are found in the record and that appears; now it is for him—that is, our liability rests on that, if we don't get justification out of that we have no justification—that is, I mean out of that and out of the testimony.

(Testimony of S. A. Sanford.)

COURT: It occurs to me that is the situation.

MR. REAMES: I will say to Your Honor frankly I only offer the proof as confirmatory matter and in order to complete the record. Now, there is evidence that the First and Douglas have merged and I believe it is material to be proven, which I can by one question, that none of these amounts represented by these memorandum checks——

MR. FULTON: Don't make a statement.

MR. REAMES: I think it would be material, otherwise it might be argued that these people's money is probably in the Douglas National Bank.

COURT: I don't see how that could be argued; the money was drawn out; how it could find its way to the other bank I don't know unless some stranger put it in there. I will sustain the objection.

MR. FULTON: Ingenuity only of the attorney for the Government could conceive such an argument.

MR. REAMES: Will it be admitted that it wasn't?

MR. FULTON: That is not the question. I say it is immaterial and nothing for the jury to consider at all; nothing to go before them.

COURT: I will sustain the objection.

(Testimony of J. F. Hoover.)

**J. F. HOOVER**

A witness called on behalf of the Government, testified as follows:

**DIRECT EXAMINATION BY MR. REAMES.**

I live at Myrtle Creek and am section foreman for the Southern Pacific Company; I have lived there seventeen years, and was a depositor of the First National Bank of Roseburg; I had a talk with Mr. Sheridan about loaning my money out; I think it was in December, 1908, I was in the First National Bank, and I told Mr. Sheridan I had about \$2700 in the bank at that time; I told Mr. Sheridan that I would like to loan the money out, for him to look out for a good loan for it, with good security, and he said he would, and that was all that was said. I had never had any other talk with him about it.

(The Government offered, and there was received in evidence, a memorandum check admitted to be entirely in the handwriting of the defendant, amount \$2500, which was marked Government Exhibit number 79.)

Witness continuing: I first saw this memorandum check in August, 1909, when it was sent to me with a statement from the bank with the other vouchers returned. No part of it has ever been paid and I never received any note for it.

**BY MR. REAMES:** This is for the purpose of proving intent.

(Testimony of Richard W. Goodheart.)

Witness continuing: I did not know what R. S. S. meant, and do not know positively now. I went down to Roseburg to see Mr. Thomas R. Sheridan. I went into the First National Bank and asked Mr. Sheridan how about that, and he was pretty busy at the time, and he said: "That is all right," and I did not have any further conversation with him at that time. I seen Mr. Sheridan once after the banks were consolidated in the Douglas National Bank. I asked him just a word or two about it, and he gave me practically the same answer; he said it was all right.

#### CROSS-EXAMINATION BY MR. FULTON.

Witness continuing: I got this memorandum check with my statement from the bank in August, 1909, and I did not know who the R. S. S. was, but I supposed it was a loan for me.

BY MR. REAMES: The Government will rest.

#### RICHARD W. GOODHEART

A witness called on behalf of the defendant, testified as follows:

#### DIRECT EXAMINATION BY MR. FULTON.

I reside in Pensacola, Florida, and was formerly a bank examiner of the United States; I held that position for six years and was a bank examiner in the year

(Testimony of Richard W. Goodheart.)

1911; at that time I made an examination of the First National Bank of Roseburg in the month of June. As to Mr. C. E. Marks, an elderly German of robust form, if that is the man that came into the bank, and with whom I had a conversation regarding his deposit, I remember him. I had a conversation with him; he was just either going on a trip to Europe or returning from Europe.

BY MR. FULTON: Now state what conversation there was with him?

A. Why, I don't remember the words.

MR. REAMES: If the Court please, as I understand, this is an impeaching question and I contend that they would be limited to that impeaching question.

MR. FULTON: No, Your Honor, while we might be, we contend that we are not, we contend for the purpose of showing an agency you can prove the declarations and admissions of the principal and this is for that purpose more than for anything else. We asked Mr. Marks that question and stated the place and circumstances and I am putting this on the ground that we have a right to prove agency by the declaration of the principal. Mr. Sheridan, for instance, would have a right to show what they told him, unquestionably, without any regard to impeaching questions. We can tell that they did tell him by their subsequent declarations or admissions. It is nothing more or less than the ordinary case of an agency, did he have authority? If he had authority we can determine that question

(Testimony of Richard W. Goodheart.)

directly as to what was said by the parties or by what was a declaration of the party against his interest subsequently.

**COURT:** That would undoubtedly be true as to anything that preceded the transaction; whether it is equally true as to what follows or not, I am not prepared to say.

**MR. FULTON:** I know of no rule, I have looked and can find nothing to the contrary.

**COURT:** But this is substantially the impeaching question anyhow, so he can answer it.

**MR. REAMES:** I would like to make one suggestion to the Court in line with the Court's suggestion, and that is that nothing Mr. Marks could have said, nothing that he could have written at that time would have created any agency which didn't exist before, nothing that he could have done after that transaction. Any statement that he made—this witness has already been on the stand, full opportunity was given to ask an impeaching question, in fact an impeaching question was asked of him. Now, I think it is clearly within the rule that before a witness can be impeached that the time and place and persons present and conversation must be related to the witness.

**COURT:** When the witness himself admits the question it is not necessary to call his attention to the time and place of course.

**MR. REAMES:** But the conversation must be called to his attention.

(Testimony of Richard W. Goodheart.)

MR. FULTON: It was, as far as Mr. Marks is concerned.

COURT: As far as this witness is concerned he may answer.

A. I don't know what he said. I don't know his exact words, I can only remember generally that what he said in effect, as I would remember the general effect of any queries that I was making, that he had authorized Mr. Sheridan to loan his money for him. It was done—when it was withdrawn from his account it was done with his authority.

Q. Did he make that explanation to you?

A. That is my remembrance of it.

Q. Now, Mr. Goodheart, don't answer—of course this question, there may be an objection to it—until the objection is heard. Do you know what the general custom is in banks of the character of this one in question in the matter of the officers of the bank making loans for their customers and evidencing that by a deposit charge check such as I hand you, being Government's Exhibit 74. I hand you that simply as a sample.

MR. REAMES: The Government objects, if the Court please. If every national bank in the country was doing that that would not make it right.

COURT: You meant with the authority of the depositors or without.

MR. FULTON: I mean to say that that by itself is not a circumstance, that is customary. Now, there are many things that may be taken as circumstances in-

(Testimony of Richard W. Goodheart.)

dicating the wrongfulness of the act, a person unacquainted with the customs might think that that very circumstance of itself was persuasive in favor of the contentions of the Government, whereas one who knows the customs of the bank would know that that wasn't.

COURT: Are you limiting your questions to cases where they are authorized by the depositor?

MR. FULTON: I had that in mind where they are authorized.

A. It is customary among the banks for the officers at times to put in a charge slip against the customer's account where they are authorized.

Witness continuing: Very often the customer says when the note is due, "Just charge that note up to my account," or making an investment, "Just purchase such and such a mortgage for me, or securities and charge it against my account." And a charge slip, the sort known in banking as a charge slip would be placed in the account. This is a charge slip.

#### CROSS-EXAMINATION BY MR. REAMES.

Witness continuing: It is not a customary way for a banker to borrow money for himself in national banks in this manner. The examination of the bank was begun at 3:30 P. M. on June 18th; I could not say what day I left Roseburg, but I generally put in one or two days in which to make my report; the examination ended at 6 P. M., June 20th, and I presume that is the day I

(Testimony of August Schlormann.)

left Roseburg. You have now shown me my report to the comptroller from Seattle; it is dated June 24, 1911, from Seattle, so I must have finished my examination of the First National Bank at Roseburg on the 20th and must have left Roseburg at that time in order to have gotten a report from Seattle on the 24th. I am not sure when these releases were sent out in the mail; I don't know whether I mailed them from Roseburg or Seattle; I had a conversation with old man C. E. Marks; I do not remember that he gave me a release; I interviewed two of these depositors that I remember of—I think I interviewed a third, but I would not be sure of that; I did not interview any more; I put Mr. Sheridan on oath at the beginning of the examination and secured from him the information relative to the notes. He showed me a number of memorandum notes that he had made and stated that he had borrowed the money—a large part of it personally, from these people, and that they had authorized him to make the charge and use their money; I got that information from Mr. Sheridan but it was given to me after I had gone to the books and picked out a number.

## AUGUST SCHLORMANN

A witness called on behalf of the defendant, testified as follows:

## DIRECT EXAMINATION BY MR. FULTON.

I reside on a ranch about 20 miles from Roseburg, and have lived in Douglas county for 25 years, and am

(Testimony of George A. Crane.)

acquainted with Mr. Sheridan and with the witness W. J. Carlon; I remember having a conversation with Mr. Carlon after the banks consolidated; I went to his house and stayed all night; he was bemoaning the loss of his money and he said, "I gave Mr. Sheridan the authority and here I have lost my money. I told him to use it, get a little out of it, and here it is all gone." Well, he made that explanation; you can understand the old man was in trouble; he said he had given him authority to use it; he did not use the exact words but that is what he implied.

#### CROSS EXAMINATION BY MR. REAMES.

Witness continuing: This conversation occurred in a hovel behind the livery stable where Mr. Carlon lived; I live twenty miles from Roseburg.

#### GEORGE A. CRANE

A witness called on behalf of the defendant, testified as follows:

#### DIRECT EXAMINATION BY MR. FULTON.

I live at Roseburg, Oregon, and have lived there all my life; I am an investor; in the fall of 1913 at Smith's livery stable in Roseburg I had a conversation with Mr. David Hull, with reference to the money he had on deposit in the First National Bank; the question arose as to wage earning and as to times and general

(Testimony of George A. Crane.)

conversation, it was mentioned that he had once had funds in the bank; that he did not now have, and he spoke as though they were in a way that he could not get hold of them to handle them as he saw fit, and I asked him what he had done with them, and he said that Mr. Sheridan had loaned them, had used them, and I asked him if he had any authority to do it, and he said yes, he told him to. I am acquainted with Mrs. DeWar, and heard a part of her testimony on the stand; I had a conversation with her about selling a note; this was about a year ago last February, as near as I can recall; she had just returned from Portland and I was conversing with her at the depot; it came up in a conversational way about her having funds there and having lost them, and I said, "Have you nothing to show for it?" "Yes, I have a note." And I asked her whether the note is the bank's or Mr. Sheridan's, and it was neither and she mentioned some one, Kelly or some one, I could not recall; she said she would take considerably less than face value for it, but she did not try to sell it to me.

#### CROSS EXAMINATION BY MR. REAMES.

Witness continuing: This conversation was in February, 1914; it was immediately following the investigation of the federal grand jury in Portland.

(Testimony of Irving Gardner.)

## IRVING GARDNER

A witness called on behalf of the defendant, testified as follows:

### DIRECT EXAMINATION BY MR. FULTON.

I live at Riddle in Douglas County, Oregon, and have lived there since the spring of 1907; I am acquainted with the witness W. J. Carlon; I overheard a conversation between Mr. Carlon and the defendant Sheridan—this was in the late winter of 1910, or the spring of 1911—either in March or February, or January, 1911, or late in December, 1910, but I think it was in the early spring of 1911. Mr. DeWitt Van Ostrand, myself, Mr. Sheridan and Frank B. Waite, part of the time, were present; this was in the bank; this was before they had gone over to the Douglas National Bank; we were talking about some timber which Mr. Sheridan was handling the timber deals for us; he was taking care of the deeds and mortgages and handling the money for us and timber. Mr. Carlon came back—started in the office, Mr. Sheridan says, “I am a little busy, Bill,” and he kept right on coming; he is sort of deaf, and he said, “What is that?” And he approached Mr. Sheridan and asked him either if he had invested his money or would invest his money for him as he wanted to get some interest. He was getting no interest. Mr. Sheridan jokingly said, “I might lose it for you, Bill.” He said, “Oh, no, Tommy, you would not do that.” That fixed it on my mind as I had never heard Mr.—

(Testimony of Frank B. Waite.)

I had always heard him called Mr. Sheridan, never Tommy. He said, "Oh, no, Tommy, you would never do that."

### CROSS EXAMINATION BY MR. REAMES.

Witness continuing: I am the managing agent of the Neenah Oregon Land Company, and raising chickens. I am a timber cruiser and buying timber lands; this conversation was either in March or February; it was some time after Christmas and prior to the first of April, 1911. I am absolutely sure of the dates.

### FRANK B. WAITE

A witness called on behalf of the defendant, testified as follows:

### DIRECT EXAMINATION BY MR. FULTON.

I live at Sutherlin in Douglas county; am a farmer by occupation and have lived there 37 years; I am acquainted with Mr. Sheridan and with the witness W. J. Carlon; I heard a conversation between Mr. Carlon and Mr. Sheridan in the bank, the First National Bank, in the spring or thereabouts, of 1911; Mr. Carlon came in and I said to Mr. Sheridan, "Well, you are busy now, I will see you later." I went in to see Mr. Sheridan on some business and I walked out and Carlon came in. I heard Mr. Sheridan say to Carlon at the time that he was busy, but as to hearing any conversation, I did

(Testimony of Frank B. Waite.)

not stay to hear it; I have had several conversations with Mr. Carlon later; I can't exactly identify the time; it was since the consolidation of the two banks; I had a talk with Carlon before Sheridan made an assignment for the benefit of his creditors; this was at the Umpqua Hotel in Roseburg.

Q. Well, what was that conversation?

A. Why, Mr. Carlon claimed that—he told——

MR. REAMES: Is it claimed this is impeachment?

MR. FULTON: I think I asked him.

MR. REAMES: I have no record of the question being asked and object on the ground it is not impeachment.

COURT: In so far as these witnesses are present at the present time the Court will permit the defendant to recall the witness and lay the foundation for the impeachment. I think it is only fair it should be done, if you insist on it.

MR. REAMES: I think that is the rule, if the Court please.

COURT: The witness Carlon is in the Court room, if you desire to lay the foundation, otherwise I would sustain the objection on the same ground I did the other until I look into the question further.

MR. FULTON: The only thing is, I don't want to delay the Court, and I don't want—I want to have that matter determined, because I don't want to feel that

(Testimony of Frank B. Waite.)

we have to depend on purely impeaching testimony for this character of—

COURT: Of course the testimony of the last witness went to the original authority and was not impeaching in its nature, but this other is, in my opinion.

MR. FULTON: It might operate as impeaching as well as proving agency. Of course the rule is that a declaration by an agent subsequent to the execution of the authority cannot be admitted, but I have supposed always the declaration of the principal could.

COURT: Not as to third parties, I do not think.

MR. FULTON: Not as to binding third parties, I will admit that is true, but here are the parties coming in about their own money.

COURT: If this was a civil action between the parties I am inclined to think you are correct, but I do not think in a prosecution by the government subsequent declarations would be evidence.

MR. FULTON: It would tend to establish the agency, and because it was necessary—now, here the depositor is a party in interest here; it is necessary to this because of the wrongful act done him, the taking of his money, as he alleges that is the basis of this action. Now, I confess I can't see the difference. He has alleged it is taken without his consent, the question purely is a question of agency, and it must depend entirely on whether he gave him authority. If the authority had to flow from some other source, if the authority had to flow from the government, but the authority had to

(Testimony of Frank B. Waite.)

flow entirely from him, and therefore it resolves itself purely to the question of agency, because it is against his interest, he is on the stand testifying there was no agency; now, it is a declaration against his interest and tends to prove the contention of the defendant, it seems to me.

**COURT:** Oh, certain other elements have to participate before you can prove a declaration against interest.

**MR. FULTON:** It has to be an action between the parties, I admit; an action between a principal and a stranger, the stranger would not be bound by a declaration of the principal. I admit that is true as to the agency; that is, you could not prove the agency as against the third party by the party who was asserting it, but it does not occur to me that that is the situation here altogether, Your Honor. Of course, the Government comes in and takes up the proposition on the theory it is not a question of binding the Government—the Government takes up the proposition on the theory there was no agency based on the declaration of the party—on the declaration of the depositor. Now, the Government is not seeking to recover of him for something that was done because the agency did not exist, the government is simply seeking to punish him because he did this without the agency, this other party asserting that there was no agency. Now, we are placed in exactly—it seems to me precisely the same position where it is a controversy between the agent and the

(Testimony of Frank B. Waite.)

principal, as to whether or not there was an agency; it all goes back to the agreement between the parties.

COURT: There would be this distinction, the principal might ratify in so far as he himself was concerned, but he could not ratify against the Government.

MR. FULTON: Ratification, of course, assumes that there was no original agency, and we are not putting it on any ground of ratification.

COURT: I will adhere to my original ruling at the present time and if I change my mind during the noon hour I will let you know.

Q. State whether or not you had a conversation with Mr. William J. Carlon—what day did you say that was?

COURT: The day of the assignment, whenever that was.

Q. Just prior to the assignment, a short time prior to the assignment by Mr. Sheridan?

A. I had a conversation——

MR. REAMES: Just a minute.

Q. Relative to what, if any, authority he had given to Mr. Sheridan to take the money that was on deposit to his credit in the First National Bank, which is complained of in this action and to use it as Mr. Sheridan had used it. Did you have any conversation with him in respect to that matter?

COURT: He has just asked for information; he may answer yes or no.

(Testimony of K. Shannon Taylor.)

A. I did.

Q. Well now, state what it was.

MR. REAMES: The Government objects on the ground it is an impeaching conversation and no proper foundation laid.

COURT: I will sustain the objection.

MR. FULTON: Save an exception.

## K. SHANNON TAYLOR

A witness called on behalf of the defendant, testified as follows:

### DIRECT EXAMINATION BY MR. FULTON.

I live at Oakland, Oregon, and have lived in Douglas county for fifteen years; I am acquainted with Mr. M. S. Doerstler; I had a conversation with him at the Roseburg Hotel some time probably in the year 1912; there was me and Mr. Doerstler and then up came John Watson; he stayed a while and talked and Sheridan came up too. We had a long talk there; we were talking there and Mr. Doerstler said he gave the money to Mr. Sheridan; that is all I remember about it; he did not say anything about his right to use it or anything of that kind; he said that he had given Mr. Sheridan authority to use the money and it was his money, and if he lost it it was nobody's business but his own, or words to that effect; he said he did not need it.

(Testimony of John L. Watson.)

### CROSS EXAMINATION BY MR. REAMES.

Witness continuing: I think he said it was about \$5,000; I can't tell you the exact date of the conversation; I think it was in 1911 or 1912; I think it was in the fall of 1912, but I would not swear.

### JOHN L. WATSON

A witness called on behalf of the defendant, testified as follows:

### DIRECT EXAMINATION BY MR. FULTON.

I live at Roseburg and have lived there over forty years; I have farmed up there and was a stock raiser. I know Mr. M. S. Doerstler; I met him one or two years ago for the first time; I had a conversation with Mr. Doerstler at the Roseburg Hotel; I think Mr. S. K. Taylor was there, but I do not know; I remember the conversation; Mr. Doerstler stated that he had placed this money in the bank of Mr. Sheridan or the First National Bank, which Mr. Sheridan had used and that Mr. Sheridan had used it by his authority, or with his consent, or words to that effect, and that if it was lost it was his money, and it was nobody's business, or words to that effect.

MR. FULTON: That is all there is on that branch of the case we have to offer, Your Honor. Will the Court allow me just a few minutes to consult—I will

(Testimony of John L. Watson.)

state to the Court that we would like to know definitely—of course I am not asking for it to say now, but it will make some difference with our plan if the Court—as to how the Court will ultimately rule respecting our right to show declarations outside of impeaching questions.

COURT: How much testimony will you have on that line?

MR. FULTON: Only be two or three witnesses.

COURT: You have called two already.

MR. FULTON: I think it is practically limited to those—just those two, I think, the only ones.

MR. REAMES: Are those the only two that you have?

MR. FULTON: That is my recollection.

MR. REAMES: If those are the only two you have the Government will withdraw its objection.

COURT: What are the witnesses?

MR. FULTON: Mr. Waite;—there is Mr. Orcutt——

MR. REAMES: That is all right, we will put him in too.

Henry L. Benson, Justice of the Supreme Court of the State of Oregon; August Schloemann, a rancher; Frank B. Waite, a farmer; Dexter Rice, County Judge of Douglas County; A. F. Stearns, formerly County Judge of Douglas County; Simon Caro, a merchant of

(Testimony of Frank B. Waite.)

Roseburg; A. M. Crawford, former attorney general of the State of Oregon; B. L. Hamilton, a merchant; Frank H. Churchill, a merchant; and W. F. Chapman, a druggist, all residents of Douglas County, Oregon, were called as witnesses for the defendant and testified that they had each resided in Roseburg, Oregon, for more than twenty-five years, during all of which time they knew the defendant; they knew what the general reputation was of the defendant for honesty and integrity in the community in which he resided, and that his reputation was good—the very best.

#### FRANK B. WAITE

A witness recalled on behalf of the defendant, testified as follows:

#### DIRECT EXAMINATION BY MR. FULTON.

Mr. Carlon had a conversation with me in which he said that he had loaned the money to Sheridan; just took his note for it and he considered Tommy as good as gold, and he thought he was perfectly safe and wanted a little interest on his money to live on, and he had loaned the money to Tommy, and now he had lost it; I had this same conversation with him several different times; whenever we met in Roseburg he would tell me his troubles.

(Testimony of A. N. Orcutt.)

A. N. ORCUTT

A witness called on behalf of the defendant testified as follows:

DIRECT EXAMINATION BY MR. FULTON.

I am a lawyer and live at Roseburg, and have lived there twelve years; I do collecting; I know Mr. William J. Carlon; he put in my hands for collection some notes against Mr. T. R. Sheridan; this was in the fall of 1913; there were two notes; they are the same notes that were introduced in evidence; he brought them to me at that time and stated that he had loaned Mr. Tommy Sheridan all the money he had and had taken those notes for it, and wanted me to collect them; wanted to attach Sheridan's property if I could find any; he said nothing about Sheridan having authority to use the money or anything; he said he had loaned Mr. Sheridan his money on that note; there was no suggestion on the part of Mr. Carlon that the money had been loaned without authority.

THOMAS R. SHERIDAN,

The defendant, called as a witness in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. FULTON.

By the witness.

I am the defendant; am 64 years of age; have lived

(Testimony of Thomas R. Sheridan.)

in Oregon since 1856; I was born in Rochester, New York; in Oregon I have been engaged in numerous businesses; when I was ten years old I went in with my father in the stove and hardware business and worked until I learned the trade; and then I went to the country and was there two years herding sheep; then I telegraphed for a year and a half for the railroad company and the Western Union; from there I worked on the train with Wells-Fargo, then my brother and I went into the hardware business and remained in that business for twenty years; for six years of that time I was county clerk of Douglas County; I was in the First National Bank for nineteen years and seven months; the bank was established in June, 1911; I am a man of family and have a wife and two girls and a boy; I have known David Hull for eight or ten years; Mr. Hull came to the bank and asked me if I could not get some interest for him from his money; he said he did not want it to lie idle; I told him "yes"; I told him I could use it and he said all right; he says, "I don't need only a little money." He said, "It don't cost me much to live and I will have money from time to time that I will put in here and you can handle it for me any way you see proper." I loaned it from time to time and as the loans were paid off I would give him credit in the book and then loan it out again. I executed to him my notes which are Government's Exhibit 6 and Government's Exhibit 2. I evidently got the benefit of the one signed by my own name, and the one signed B. C. Agee by myself went to the credit, as I see by the notation of

(Testimony of Thomas R. Sheridan.)

March 3, 1911, of B. C. Agee's account. I put the notes in an envelope marked David Hull, and put them in the alphabet H, in the vault of the First National Bank; I left them there and never took them out. I drew the two memorandum checks for the purpose of putting the money out at interest; the memorandum checks were given to the bookkeeper, passed through the regular form by him, written up, and charged to the account of the party. I have never seen the release of David Hull, but I know it is here; he did not consult me before signing it. None of the persons who signed releases consulted me and I did not suggest to them to sign it or ask them to sign it, or call on any of them, or hunt them up.

Mr. Doerstler was another of the depositors that wanted interest on his money; he told me to take that money and handle it any way that I saw proper; this was shortly after he made his first deposit and in Roseburg; this was before I took the money and all these transactions were before I took the money.

In regard to Mr. Carlon, I met him as I was passing the barn where he used to be, on my way home. He was sitting on a bench in front of the livery stable. I says, "Bill, I would like to use your money; it is not doing you any good up there." He said, "Well, if I can get some interest and get it back you may have it." I says, "Do you consider that I would pay it back if I took it?" and he said "Yes." So I took it.

My signature is on Government's Exhibit Number 12, which is a note signed by me, and the charge check

(Testimony of Thomas R. Sheridan.)

by which the money was drawn is also signed by me. I asked him if I could use it myself and asked him if I was good for it, and I thought that I was; at that time I supposed I was worth about \$125,000 over and above my indebtedness—I felt confident of it. About a year ago I sent Mr. Carlon one hundred dollars from San Francisco, and my brother paid him fifty dollars in Roseburg.

In regard to count number 5, where it is charged that I appropriated five hundred dollars of the money of Mr. Carlon, I have examined Government Exhibit Number 14. This money was taken out of the same fund; at the time I had the talk with Mr. Carlon the money that was later taken out on these notes was then in the bank to his credit.

In regard to count number 4 of the indictment, Mr. Doerstler told me to lend his money out and use it in any way I saw fit. This conversation was in the First National Bank of Roseburg and was before I took the money.

In regard to the loan of Laura Verrell, I have to say that before the Crouch \$4,000 loan became due I wrote to Mrs. Verrell and told her that the money would soon be paid off and that if she wanted it to draw more interest, or words to that effect, that I could place it safely. My letter was dated April 6, 1911, and is Government's Exhibit Number 8. Shortly after that she came into the bank and as I remember, she did not have quite enough money there, and she put in some

(Testimony of Thomas R. Sheridan.)

money, and in the conversation I asked her if she wanted to lend that money out, and she said she did; she said she did not know exactly who to trust, and I asked her if she would trust me, which she said she would. Well, I told her as soon as I was able to place it I would advise her and charge her account and put the document in the usual place, which I did. The memorandum check went through the books and I suppose it went to her in the usual course of business. It went to the bookkeeper. It is a custom of the bank in respect to returning checks and drafts and papers by means of which money has been taken out of an account, to return the checks and drafts to the depositors. We tried to get the account books in every month; some people hesitated—they did not like to give up their books, but when we could make out their statements if they did not have the books. We tried to get their books however once a month. The bookkeeper would write them up and balance them and send these memorandum checks, or checks that they had drawn and return the books; when the books were written up they would show the condition of the account, what had been drawn out, and what had been put in, just the same as the bank books themselves would show. All checks that had been drawn would be charged up to that account, the book balanced, and the checks and book returned; and these charge checks would be returned to the depositors just as the others would be returned.

The next conversation I had with Mrs. Verrell was in the latter part of November, 1913; I met her son on

(Testimony of Thomas R. Sheridan.)

the street and he said his mother would like very much to see me; I said I would be glad to see her; he said that if she was well enough he would bring her in tomorrow, so he did. The following day she came into the Umpqua Hotel, went to the side entrance, a little parlor that was there, and she apparently was very glad to meet me. She said she was, and said she was sorry I was having trouble. At that time I had made an assignment and she said her husband had always thought a great deal of me, and I had attended to his business when he was alive, and she had the same friendly spirit for me; she said that she did not need the money, or that she did not want the money, and she said that all she wanted to know was that she was going to get it some time; and I told her that if I lived I would surely pay her; and she said that she was glad to hear me say so, and after a few other casual remarks we parted.

In regard to the six thousand dollar count in the indictment for the amount of \$260 of the money of Mr. Doerstler, it was taken on the same authorization. I gave for that money Government Exhibit Number 20, and the memorandum or charge check was the check which transferred the money. I put the note in Mr. Doertsler's envelope and put that in the bank in the letter "D".

In regard to the seventh count of the indictment, which refers to the appropriation of \$5500 of the money of J. E. Hainey, Mr. Hainey asked me if I could not get some interest for him, that there was too much mon-

(Testimony of Thomas R. Sheridan.)

ey there; I told him I could and he told me that I could take it and use it in any way I wanted to, but he wanted my endorsement, and pursuant to that I took the money. I signed Government Exhibit Number 16 and the accompanying memorandum check, which check was returned to him in the proper course of business. The note of Mr. Hainey's was subsequently paid.

In regard to the eighth count in the indictment, charging the alleged misappropriation or taking of \$5000 of the money of C. E. Marks, the circumstances were about the same as the others. Mr. Marks told me he could not afford to leave his money lying idle, he wanted me to handle his money, which I did.

In regard to Government Exhibit Number 35 and Government Exhibit Number 36, I executed those notes and also executed the memorandum check, Government Exhibit 34.

In regard to the sons of Mr. Marks, who testified, I have to say that at the time Mr. Marks opened up the accounts, about the same time in fact he opened the accounts for the boys, and told me to take the boys' money and use it just the same as my own; he told me that they would rather trust me as I knew more about those matters than they did, and he would bring in the bank book often and make deposits for them, and take the books away again, and until very late in the season, a while before the boys commenced putting in the money for themselves, but he did most of the business for some time. He was living five miles from Roseburg, and

(Testimony of Thomas R. Sheridan.)

they were on the ranch with him, with the exception of the one son who was at Gardner. None of the Marks boys ever came to me and talked to me, or ever showed me any of the so-called release letters from Mr. Goodheart. I did not know who Mr. Goodheart had written to. I did not go to anyone who was supposed to have received a letter, and took no part in that at all. I left that entirely to them.

Mrs. Verrell brought the release document in to me and she said, "Mr. Sheridan, I received this document; what shall I do with it?" I said, "If it is correct, Mrs. Verrell, why sign it." I did not see it or take it in my hands at all. She laid it on the desk there, but I did not pick it up. I never at any time made any statement to any of the Marks boys or any person other than the Marks boys, in which I told them or anybody else that the Goodheart letter was a mere matter of form.

When the financial trouble came upon me I was a wreck. It has only been in the last few months that I have begun to feel any better, or felt as I used to feel—the surprise was so great to me; it affected my mind and memory; I thought I was worth at least \$125,000 above all of my liabilities. I had borrowed from a Mr. Boldgett \$80,000, and as security had assigned my interest in the Oregon Land & Livestock Company, which was a one-twentieth interest in 150,000 acres of timber land in southeastern Oregon; I had been paying him his interest promptly, which was high—seven per cent—paying it every three months. He finally notified me that he wanted his money, and I could not get it, and he

(Testimony of Thomas R. Sheridan.)

gave me \$28,000 more and took my stock. I considered that he got it for \$130,000 less than its value. We had a sale on it for five million dollars for the entire tract and my interest would have been \$250,000, as I had a one-twentieth interest in the tract.

Then I had other misfortunes of a financial nature that overtook me in those times. I lost \$40,000 in a real estate deal that I was gotten into by an Oakland banker, and when all these matters came about my health was seriously affected. But back in 1911 I was feeling that I was still solvent—in fact I felt that I knew I was, and most of these instances that I have referred to occurred immediately after that.

I remember Mr. Chapman. Like the rest, he came in and said he wanted some interest on his money and he told me to loan it, which I did.

And Mr. E. E. Haines, I remember him. He told me to take his money and do the best I could for him, he wanted some interest—he did not want it lying idle.

And Mrs. DeWar—she told me the same thing.

The Kelsay note of date November 6, 1909, is mine. Mr. Kelsay and I had some eight or ten thousand head of sheep as well as land in eastern Oregon. He was supposed to put in half the money and I the other half. A severe winter came on and a freeze, and we lost about four thousand head—I think perhaps more. Mr. Kelsay always told me that anything I did in his name was always satisfactory—would be satisfactory to him.

(Testimony of Thomas R. Sheridan.)

I remember Joseph Mosthaf. That loan occurred in February, 1911, for \$800. He had a water and light bond and after that was paid he told me that he wanted to put the money out again, and told me to take it and dispose of it as I saw proper; that is to keep it, and I did as he authorized me to, and put in a memorandum check and a note in the vault just the same. His name being Mosthaf, I put his note in the pigeon hole in the vault lettered "M".

In regard to Government's Exhibit Number 74, that is the instrument I executed. The memorandum check passed through the usual channel into the bookkeeper and there written up and afterwards sent to the depositor. These memorandum checks and all of them were treated precisely the same as the check drawn by the party himself, as to its being returned to the party when the book was balanced.

I remember Mr. William Wende. I have done his business for a long time, and have handled all his business. He did not pretend to do any of it; he usually came to the bank with his small check and had it made out and cashed; I used his \$1010 at his request; he requested me to use it and I did. This was before I had used it.

In regard to Mr. Agee, I have to say that many years ago Mr. Agee was in a very critical circumstance—in fact he would have lost his property, and he told me so unless I came to his assistance, and he induced me to take a half interest in a fruit orchard that he had

(Testimony of Thomas R. Sheridan.)

south of town about eight miles; after I did so Mr. Agee said that he was not any man in finances and that he would run the farm if I provided the necessary funds to carry on the business, and that if it was necessary at any time to have any money that I was perfectly at liberty to use his name. I transferred the money to his account.

In regard to Mrs. Byron, I have not seen those papers since June, 1911; if the note is not in the papers it has been taken since that time because I put every note that I made out in an envelope and put it as I said before, alphabetically. I put hers in the letter "B".

In regard to the memorandum check, it was executed by me and is my impression that I gave a note for the amount. Mrs. Byron came in with the money—\$2000, at one time, and I was in the bank, and I thought that she wanted to do business with the bank, and she said, "No, I don't want to do business with the bank; I want to do business with you; I don't know anything about the bank." And we went back into the back part of the bank and she had in her handkerchief \$2000 in gold; she said, "There it is, count it. I want you to take that and keep it for me, and anything you do with it will be satisfactory to me." I do not remember that anything was said about interest but I imagine she would expect interest.

In regard to the letters, Defendant's Exhibits 21, 22, and 23, these are all letters that I received through the mail from Mrs. Byron. After my financial trouble

(Testimony of Thomas R. Sheridan.)

I did not have a dollar. I turned over everything I had and made a general assignment for the benefit of all my creditors. I did not go voluntarily into bankruptcy but was willing to stand on my assignment and pay what I could. I turned over every dollar that I had that I knew of, and this left me without any money at all. I had to borrow twenty-five dollars to come up on the boat here. I have not been able to employ counsel, but my friends are employing my counsel for me.

#### CROSS EXAMINATION BY MR. REAMES.

Witness continuing:

The First National Bank was organized in 1891, and from 1891 up to the time that it went into voluntary liquidation I remained its president all that time.

I do not think that Mr. Hill ever brought the so-called Goodheart release to me or handed it to me. I do not know how many of these transactions there are where I have written up these memorandum checks and the amount remains unpaid. I could not tell you approximately. I could not tell you within ten or fifteen thousand dollars. I have not had access to them since June, 1911; I could give you no approximation at all. I could not tell you how many notes there are to which I signed the name of A. M. Kelsay; I could not tell you how much Mr. Kelsay is supposed to owe on account of those transactions—the documents would be the best proof. I could not tell you how many notes I signed for Mr. Agee.

THE GOVERNMENT ADMITTED THAT THE GENERAL REPUTATION OF THE DEFENDANT IN ROSEBURG AND IN DOUGLAS COUNTY FOR HONESTY AND INTEGRITY WAS GOOD.

Whereupon the defendant rested.

Whereupon the Government rested.

The above and foregoing (including therein also all exhibits, which are by that certain stipulation of the parties, and order of the Court hereinafter recited, transmitted in the original and certified copies thereof to the Circuit Court of Appeals from the Ninth Circuit, and by said stipulation and order made a part hereof in all respects as though incorporated at large herein), contains all of the evidence of any and every character given upon the entire trial of this cause, and all of the proceedings thus far had upon said trial.

There was no other evidence introduced at said trial other than that hereinbefore set forth, with the exception of said exhibits.

Within the time limited by the rule of the Court so to do, the defendant filed with the Court in writing the following proposed instructions, with the request that the same be given on behalf of said defendant as a part of the charge of the Court to the jury:

## I.

Gentlemen of the Jury, as to Count One of this indictment I direct you to return a verdict of "not guilty."

## II.

The defendant requests a like instruction to the above as to each count of the indictment.

## III.

If the Court shall decline to direct a verdict in favor of the defendant, as to each count, then the defendant requests the court to give the instructions hereto attached.

## I.

It is charged in the first count of the indictment that the defendant, being president of the First National Bank of Roseburg, Oregon, on the 7th day of March, 1911, willfully and unlawfully abstracted and converted and caused to be abstracted and converted to his own use, benefit and advantage and to the use, benefit and advantage of one B. C. Agee, certain moneys, funds and credits of the said bank, of the amount and value of \$230.00, which sum so abstracted, it is alleged, was held by the said National Bank as a deposit for the sole use and benefit of one David Hull, and it is alleged in the indictment that said sum was so abstracted without the knowledge or consent of the said banking association and with the intent on the part of the de-

fendant to injure and defraud the said association and the said depositor.

In Count Two of the indictment it is alleged that the defendant, being president of the said national banking association, on the 22d day of March, 1911, willfully and unlawfully abstracted and converted and caused to be abstracted and converted to his own use, benefit and advantage and to the use, benefit and advantage of one W. P. Reed certain moneys, funds and credits of said banking association of the amount and value of \$530.00, out of moneys, funds and credits of said banking association held by it as a deposit for the sole use and benefit of one M. S. Doerstler, a depositor and creditor of said bank, and it is alleged that such abstraction and conversion was without the knowledge and consent of the said association and with the intent on the part of the defendant to injure and defraud the said banking association and the said M. S. Doerstler.

The other six counts of the indictment charge in like manner the abstraction by the defendant of certain specified sums out of moneys held by the bank for certain named depositors. In each of the other counts, however, it is alleged that the abstraction was for the sole use and benefit of the defendant.

## II.

Before you can find the defendant guilty on any count of this indictment it will be necessary for each and every juror to be satisfied beyond a reasonable

doubt of two things; first, that the defendant took and converted to his own use, benefit or advantage, or to the use, benefit or advantage of some other person, the amount named in the indictment or some portion thereof, and second, that in so taking and converting such sum he acted with intent to injure and defraud either the bank or the depositor named.

### III.

In each count it is charged that the money alleged to have been taken by the defendant was held by the bank as a deposit for a named depositor of the bank, hence if you find that the defendant was authorized by such depositor in any case named in the indictment to take and use the money by such depositor deposited, and that then the defendant took the money pursuant to such arrangement, then of course you should find the defendant not guilty on that charge, for the depositor had a right to authorize the defendant to take and use his, the depositor's money, in any way he saw fit.

### IV.

If you find that as respects the amount alleged to have been taken and converted by the defendant in any particular count of this indictment, the defendant took the same or any thereof and converted it to his own use or to the use of any other person, you will first inquire whether or not he had the authority of the depositor from whose account the same was taken to take and use the same, and if you find that he had such

authority, then you should find the defendant not guilty under that count; or if you have a reasonable doubt as to whether or not the defendant so took and converted such sum without the authority of the depositor, then you should find the defendant not guilty under that count.

## V.

If, in considering any particular count of the indictment, you find beyond a reasonable doubt that the defendant did not have authority to take and use the money or any portion thereof charged to have been taken by him, but find that he did take and use the same in good faith, believing that he had authority so to do, or if you entertain a reasonable doubt as to whether or not he in good faith believed he had authority to take and use the same, then you should find the defendant not guilty. In other words, in order to find the defendant guilty, you must find beyond a reasonable doubt that he not only took and appropriated to his own use or to the use of another the money, or some thereof, charged in the particular count to have been taken and appropriated by him, without authority of the depositor, but you must also find and be satisfied beyond a reasonable doubt that in taking and appropriating the same he acted with intent to injure or defraud the bank or the depositor. If, therefore, you find, that although the defendant took and appropriated to his own use or to the use of another any particular sum held on deposit by the bank without the authority of the bank or without the authority of

the depositor, but find that he honestly believed he had the authority of the depositor so to do, and that, so believing, he took and appropriated the same, or if you have a reasonable doubt as to that, you should find the defendant not guilty.

## VI.

There is some testimony on the part of the prosecution tending to show that in some instances a depositor authorized the defendant to take his or her money then on deposit in the bank and loan it on good security and that defendant thereupon took the money and used it himself, placing his personal note in the bank for it. The defendant, however, contends that in all such cases the depositor authorized him to use the money himself, if he desired to do so. I instruct you, however, that so far as this case is concerned, if you find that as to any sum of money mentioned in any count of the indictment the defendant was authorized to take the same, but instructed to loan it on security only and that he thereupon took the money and used it himself, you cannot find him guilty for so doing, for in such case he had authority to withdraw the money from the bank and if, after withdrawing it, he did not loan it as directed but used it himself, he did not thereby violate the statute under which he is being prosecuted here.

Whereupon, the court gave to the jury the following instructions:

**GENTLEMEN OF THE JURY:** You have listened patiently to the testimony and arguments of

counsel in this case during the past week and it now becomes my duty to lay down a few general rules of law to guide you in your deliberations. When I have done this the responsibility of the Court for the conduct of this trial will end and yours will begin.

Section 5209 of the Revised Statutes of the United States, so far as material to your present inquiry, reads as follows: "Every president of any association" (meaning, of course, a National Banking Association), "who abstracts any of the moneys, funds or credits of the association with intent to injure or defraud the association or any other company, body politic or corporate, or any individual person, shall be deemed guilty of a misdemeanor and shall be punished as therein provided." The indictment in this case charges eight separate and distinct violations of this section in as many different counts.

The first count charges that Thomas R. Sheridan, the above named defendant, heretofore, to-wit: on the 7th day of March, 1911, in the county of Douglas, within the State and District of Oregon and within the jurisdiction of this Court, was then and there President of a certain National Banking Association, to-wit: the First National Bank of Roseburg, Oregon, theretofore duly organized and established and then and there existing and doing business at the city of Roseburg in the county of Douglas, within the State and District of Oregon, District aforesaid, under the laws of the United States, and that he, the said Thomas R. Sheridan, so then and there on the date last above mentioned being

such President did then and there at the said city of Roseburg, County of Douglas, in the State and District of Oregon, on, to-wit: the 7th day of March, 1911, willfully and unlawfully abstract and convert, and cause to be abstracted and converted to his, the said Thomas R. Sheridan's own use, benefit and advantage, and to the use, benefit and advantage of one B. C. Agee, certain moneys, funds and credits of said National Banking Association, of the amount and value of \$230.00, a more particular description of which is to this Grand Jury unknown, from and out of the moneys, funds and credits of said National Banking Association held by the said National Banking Association as a deposit for the sole use and benefit of one David Hull, a depositor and creditor of said First National Bank of Roseburg, by means of a certain instrument designated as a memorandum check, without the knowledge and consent of said National Banking Association, and with the intent then and there on the part of him, the said Thomas R. Sheridan, to injure and defraud the said National Banking Association and said depositor and creditor therein."

The seven remaining counts are in all respects similar to the first, except as to the date of the abstraction, the amount abstracted, the name of the depositor and the person to whose use, benefit and advantage the moneys were appropriated.

This indictment, gentlemen of the jury, is but the formal accusation presented against the defendant by the Grand Jury. It is no evidence of his guilt and

you must indulge in no presumption against him simply by reason of the fact that he has been indicted.

To the several counts of the indictment the defendant has interposed his plea of not guilty. This plea places at issue every material averment of the indictment and casts upon the Government the burden of proving every such averment to your satisfaction and beyond a reasonable doubt.

A reasonable doubt, in this connection, is such a doubt as will cause a reasonable, prudent and considerate man to hesitate or waver in the gravest and most vital concerns of human life before acting on the truth of the matter charged or alleged. This doubt may arise from the evidence or from the lack of evidence. On the one hand you will not be swayed by doubts which are purely imaginary, capricious or speculative; on the other hand you must not convict in the face of doubts which are real and substantial. If from a fair and candid consideration of all the testimony you can say upon your oaths as jurors that you have an abiding conviction to a moral certainty of the truth of the charge, then you have no reasonable doubt and should convict; if, on the other hand, you have no such moral convictions, if you have a doubt for which a substantial reason can be given you must give the defendant the benefit of that doubt and find him not guilty.

I further charge you that this rule of reasonable doubt applies to each and every one of you, and so long as any juror entertains a reasonable doubt as to the

guilt of the defendant it is his sworn duty to vote not guilty. I do not mean by this that you should be arbitrary or unyielding, for it is your duty to compromise your differences as best you can; but if, after a full consideration and discussion of all the testimony, you still entertain a reasonable doubt as to the guilt of the defendant, you must vote not guilty so long as such doubt remains.

I further instruct you at this time that every man accused of a violation of the law is presumed to be innocent of the crime charged until his guilt is established to the satisfaction of the jury, to the exclusion of every reasonable doubt. This presumption of innocence is not a mere fiction which you may disregard at pleasure; it is a substantial part of the law of the land; it accompanies the defendant throughout the trial and abides with him until its last vestige is removed by the evidence on the part of the Government and until you are satisfied of his guilt beyond a reasonable doubt, notwithstanding the presumption of innocence with which the law surrounds him.

There are two elements in the crime here charged, gentlemen of the jury, or at least two principal elements: One is the abstraction of the funds of a national bank and the other is the intention with which the funds were so abstracted. I will define the word "abstract," in the language of the Supreme Court of the United States: "The word 'abstract' as used in the statute has but one meaning, being that which is attached to it in its ordinary and popular use. It means to take

or withdraw from, so that to abstract the funds of a bank, or a portion of them, is to take and withdraw from the possession and control of the bank, the moneys and funds alleged to be abstracted. To constitute this offense within the meaning of the act it is necessary that the moneys and funds shall be abstracted from the bank without its knowledge and consent, with the intent to injure or defraud it or some other company or person, or to deceive some officer of the association or an agent appointed to examine its affairs."

I might add here that there is no charge in this indictment that the abstraction was made for the purpose of deceiving any officer of the association or any agent appointed to examine its affairs.

It is conceded in this case, gentlemen of the jury, that the First National Bank of Roseburg was an association organized and existing under the laws of the United States during all the times mentioned in this indictment; it is likewise conceded that the defendant Thomas R. Sheridan was the president of that association during all the times mentioned in the indictment and for many years prior thereto; it is likewise conceded that the defendant Thomas R. Sheridan withdraw from the bank the several sums of money belonging to the several depositors as set forth in the indictment by means of certain memorandum checks received in evidence.

The principal question for your consideration will be—or at least the first question for your consideration will be: Was the defendant authorized by the depos-

itors to withdraw these moneys? If you find from the testimony in this case that he was so authorized or if you find from the course of dealing between the defendant and the depositor that the defendant had reasonable cause to believe and on good faith did believe that he was so authorized, then he is not guilty of the crime here charged. But if you are satisfied beyond a reasonable doubt that he had no authority from the depositor to withdraw the funds, and if you further find that he had no reasonable cause to believe and did not in good faith believe that he had such authority, then his abstraction of the funds was wrongful, and the crime is complete if you find that the abstraction was made with the intent to injure or defraud either the banking association or the depositor.

This, gentlemen of the jury, is the proper place to limit the scope and effect of certain testimony which the Court received during the trial. You will recall that the Court admitted testimony relating to transactions between the defendant and other depositors of a similar nature to those set forth in the indictment. This testimony was not offered for the purpose of proving authority or a want of authority for the issuance of the particular checks set forth in the indictment. You cannot prove that a man had authority to draw a check for one depositor by proving that he had authority to draw a check for another depositor at another and different time. The converse of this is equally true. You cannot prove that a man had no authority to withdraw funds from a bank in behalf of one depositor by proving that at another and different time he withdrew funds

from the bank belonging to another depositor without authority. So that the testimony as to these transactions outside of those particular transactions set forth in the indictment must not be considered by you in determining the question of want of authority at all. You will not consider this testimony until after you have settled in your own minds beyond a reasonable doubt that the funds mentioned in the indictment were withdrawn from the bank by the defendant without authority from the depositor, real or apparent, as I have defined these terms to you.

If you find beyond a reasonable doubt that the defendant abstracted these funds wrongfully, as I have defined that term to you, the next question for you to determine will be: Were they so abstracted with the intent to injure or defraud either the association or the depositor?

To defraud implies and includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust and confidence generally reposed, and which are injurious to another, or by which an undue and unconscionable advantage is taken of another.

On the question of fraudulent intent I charge you that it is an axiom of the law that every sane man is presumed to intend the natural or necessary consequences of his voluntary acts, and this presumption will usually prevail unless from a consideration of all the circumstances the jury entertain a reasonable doubt whether the intent did in fact exist.

In directing that these offenses, or the acts which constitute them, must be committed with intent to injure or defraud the bank, the statute does not intend it shall be made to appear that the defendant had either malice or ill will towards the association or towards the depositors. This term, namely: "With intent to injure and defraud," means nothing more than that general intent to injure or defraud which always arises in contemplation of law when one willfully or intentionally does that which is illegal or fraudulent and which in its necessary and natural consequences must injure another. So that, while the offense of abstraction without authority must be committed by the defendant with intent to injure or defraud either the association or the depositor, that intent may be shown or may be presumed from the doing of the wrongful, fraudulent and illegal acts which in their necessary results naturally produce loss or injury, either to the association or to the depositor.

The law presumes that every man intends the legitimate consequences of his acts. Wrongful acts knowingly or intentionally committed can neither be justified nor excused on the ground of innocent intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proven to have been knowingly committed.

If, therefore, you find from the evidence beyond a reasonable doubt that the defendant, Thomas R. Sheridan, without having previously secured the authority of the depositors so to do, or without apparent authority

as I have defined that term to you, willfully abstracted the funds of the bank then held in said bank to the credit of said depositors in manner and form as alleged in the indictment, and converted said funds to his own use and benefit, the intent to injure and defraud both the bank and the said depositors may be by you presumed. Acts which involve such consequences, when knowingly and wrongfully committed, established not only the guilty intent to injure and defraud mentioned in the statute, but they disclose moral turpitude utterly inconsistent with an innocent intent.

It is presumed that every person intends the natural and ordinary consequences of his own acts. Applying this rule to the case at bar, if you should find from the evidence beyond a reasonable doubt that the defendant without authority took from the accounts of his depositors named in the indictment, without previous authorization from them, their money and converted the same to his own use and benefit, and thereby placed the same beyond the control of said depositors, you would be justified then in presuming that he did these acts with intent to injure and defraud said depositors.

Again, as observed by the Supreme Court of the United States experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law permits a resort to circumstances as a means of ascertaining the truth. And in such cases great latitude is allowed by law to the acceptance of indirect or circumstantial evidence, the aid of which is constantly required, not merely for the

purpose of remedying the want of direct evidence, but also to supply protection against imposition. Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, objections to testimony on the ground of irrelevancy are not favored for the reason that the force and effect of circumstantial facts usually and almost necessarily depend upon their connection with each other. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, corroborated by minor coincidences, be sufficient to constitute conclusive proof, and where fraud is the question at issue evidence of frauds of like character committed by the same parties at or near the same time is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in point of time, the inference is reasonable that they proceeded from the same motive. The case of fraud as here stated is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge.

But, gentlemen of the jury, while the fraudulent intent may be proved by either direct or circumstantial evidence, it must nevertheless be established to your satisfaction and beyond a reasonable doubt before you can return a verdict of guilty. And where the Government relies on circumstantial evidence to establish the fraudulent intent the circumstances themselves must be proved to the satisfaction of the jury and beyond a reasonable doubt, and when so proved they must not only be con-

sistent with the guilt of the defendant, but they must be inconsistent with any other rational hypothesis. In other words, gentlemen of the jury, if you can reconcile the testimony in this case on any reasonable theory consistent with the innocence of the defendant it is your duty to do so.

A number of reputable witnesses have testified that for many years last past the reputation of the defendant for honesty and integrity in the community in which he has resided during that period has been good, and I might add here that that fact is conceded by the Government. This testimony is evidence in favor of the defendant and is before you for your consideration in connection with the other evidence in the case. In all cases in which a person accused of a crime, involving dishonesty and want of integrity, is on trial, his good reputation for honesty and integrity, is properly to be submitted to the jury. The purpose of such testimony is to enable the jury to determine the degree of improbability that the person on trial, who possesses such a reputation, would have committed such a crime. What weight is to be given to the good reputation of the defendant rests solely with the jury. The circumstances in one case may be such that an established reputation for honesty and integrity on the part of the defendant would create a reasonable doubt as to his guilt, although without such reputation the evidence in the case would be convincing and justify a verdict of guilty. In another case the circumstances may be such as would require a verdict of guilty, notwithstanding an established reputation for integrity on the part of the defendant.

It does not necessarily follow from the fact that a man has a good reputation for honesty and integrity that he actually possesses those traits of character and the mere possession of such a reputation does not render the person possessing it incapable of committing a crime involving dishonesty and a want of integrity. It is within the common knowledge of mankind that many persons bearing a good reputation have nevertheless been guilty of crime. While the reputation of the defendant for honesty and integrity is for your consideration as part of the evidence in the case, it is entitled to just the weight—no less and no more—which you, upon a review of all the evidence in the case and in the exercise of a sound judgment, shall attach to it.

You, gentlemen of the jury, are the sole judges of the facts in this case and of the credibility of the witnesses. Before reaching a verdict you will carefully consider and compare all the testimony, you will observe the demeanor of the witnesses on the stand as they appeared before you; you will take into consideration their interest in the result of your verdict, if any such interest is shown; their knowledge of the facts in relation to which they have testified; the probability of the truth of their testimony; their bias or prejudice, or the absence of either of these qualities; any motives that may lie back of their testimony, and all the facts and circumstances given in evidence or surrounding the witnesses on the trial.

I further charge you, gentlemen of the jury, that if you find that any witness has willfully testified false-

ly to any material fact before you, or if any witness has been successfully impeached, you are at liberty to disregard the testimony of that witness entirely except in so far as he or she may be corroborated by other credible testimony or by other known facts in the case.

Congress has passed stringent laws for the protection of deposits in national banks, and it is the duty of courts and juries to enforce these laws whenever and wherever violated, and if you are satisfied in this case beyond a reasonable doubt that this defendant has violated these laws in manner and form as charged in the indictment you will not hesitate to so find by your verdict. If on the other hand, you entertain a reasonable doubt as to his guilt, no higher or more solemn duty can rest upon you than to return a verdict of not guilty.

The Government of the United States insists on obedience to its laws, but it demands no victims; it asks equal and exact justice at your hands and nothing more—justice for itself and justice for the citizen accused of violating its laws.

**MR. FULTON:** I except to the Court's refusal to give defendant's requested instructions Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, and I also except to the Court's refusal to give those instructions in the manner and form requested. I take an exception to the refusal of the Court to instruct the jury to return a verdict for the defendant on the ground that sufficient evidence in law of intent to defraud on the part of the defendant

has not been introduced in this case, and as that is an essential element of the crimes charged that therefore the jury would not be justified in returning a verdict against the defendant on any or all of the counts in this indictment. I except to the Court's refusal to instruct the jury to return a verdict in favor of the defendant on the ground that sufficient evidence in law that defendant did not have authority to withdraw or abstract the money deposited in the bank of which he was the president, in the manner and by the method which the uncontradicted evidence in this case shows was employed by him, has not been introduced in this case.

I ask the Court at this time to instruct the jury that sufficient evidence in law has not been introduced in this case to justify them in finding that defendant withdrew or abstracted money belonging to any of the depositors who have testified as witnesses in this case, on the ground that when a depositor deposits money in a national bank as the depositors testifying in this case have done the money so deposited ceases to be the money of the depositor and becomes the bank's money, and that there is merely a creditor and debtor relation between the depositor and the bank, and therefore that the money withdrawn or abstracted by the defendant was money belonging to the bank.

**THE COURT:** The instruction requested is refused.

**MR. FULTON:** I save an exception, if the Court please. I ask the Court at this time to instruct the jury that the indictment in this case charges the defend-

ant with having abstracted moneys, funds and credits of the First National Bank of Roseburg, Oregon, and that therefore, if the jury find that the moneys, funds, or credits abstracted by the defendant as shown by the evidence in this case were moneys, funds or credits of the depositors who have testified in this case, the jury should find the defendant not guilty.

THE COURT: I refuse to so instruct the jury.

MR. FULTON: I save an exception, if the Court please. I also particularly except to the Court's refusal to instruct the jury in accordance with defendant's requested instruction No. 5, that an officer of a National Bank who has full charge of making loans on behalf of the bank has a right to lend any portion or all of the money deposited in the bank by depositors on general checking accounts without first obtaining permission from the depositor or depositors to do so. I except to the Court's failure to instruct the jury that sufficient evidence in law has not been introduced in this case to justify the jury in finding that any of the depositors who have testified in this case have been defrauded by the acts of defendant.

Thereupon the jury retired to deliberate upon a verdict, and thereafter returned into Court their verdict finding the defendant guilty as charged upon Counts One (1) and Four (4) of said indictment. Said verdict having been recorded by the clerk and read to the jury who confirmed the same, the Court thereupon discharged the jury from further consideration of this cause.

And the Court having duly set a day for pronouncing sentence upon the defendant, said defendant before sentence was pronounced upon him presented to the Court a motion in arrest of judgment and a motion for a new trial herein; and the aforesaid motion in arrest of judgment and motion for a new trial herein having been argued by counsel for the defendant and for the plaintiff, respectively, the Court denied said motions, and, thereupon, rendered its judgment and sentence upon the defendant, and made its order granting to said defendant thirty days within which to prepare and serve upon the plaintiff a draft of his proposed bill of exceptions upon writ of error herein, which time was thereafter extended by successive stipulations of the parties and orders of the Court to and including the 10th day of October, 1915.

Within the time allowed by stipulation of the parties and the order of this Court the bill of exceptions has been presented, filed and served and is now by the stipulation of the parties and order of this Court settled and allowed as the bill of exceptions in this case.

Concerning the embodiment of exhibits in and as a part of this Bill of Exceptions, the respective parties hereto have stipulated and the Court has made its order as follows, to-wit:

*In the District Court of the United States for the  
District of Oregon.*

UNITED STATES OF AMERICA, *Plaintiff,*

vs.

THOMAS R. SHERIDAN, *Defendant.*

Stipulation and Order Transmitting all Exhibits and the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit and making the same a part of the bill of exceptions without incorporation at large therein.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that all United States' exhibits and all defendant's exhibits introduced in evidence and on file in the above-entitled cause may be transmitted in the original by the Clerk of the above-entitled Court to the Circuit Court of Appeals for the Ninth Circuit, and that said exhibits may be included as and deemed a part of the Bill of Exceptions upon Writ of Error herein, with the same effect in all respects as though incorporated at large in said Bill of Exceptions.

As to those Exhibits which have been heretofore withdrawn, certified copies shall be transmitted in lieu

of the originals, to have the same force and effect as the originals.

Dated this 19th day of October, 1915.

Clarence L. Reames.

United States Attorney for Oregon.

J. L. McNab,

Attorney for Defendant.

Now, on this day, for good cause shown and pursuant to the above and foregoing stipulation, the Clerk of the above-entitled Court is hereby directed and ordered to transmit all of the United States' exhibits and all of the defendant's exhibits introduced in evidence and on file in the above-entitled cause, in the original, to the United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS HEREBY ORDERED that said exhibits shall be included as and deemed a part of the Bill of Exceptions upon Writ of Error herein with the same effect in all respects as though incorporated at large in said Bill of Exceptions.

IT IS FURTHER ORDERED that in those instances where exhibits have been withdrawn, that the certified copies thereof be transmitted, the same to have the same effect as the originals.

Dated this 19th day of October, 1915.

Frank H. Rudkin,

United States District Judge.

*In the District Court of the United States, for the  
District of Oregon.*

UNITED STATES OF AMERICA, *Plaintiff,*

VS.

THOMAS R. SHERIDAN, *Defendant.*

STIPULATION RE BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the above and foregoing Proposed Bill of Exceptions upon Wirt of Error herein has been presented within the time allowed by law and the rules and orders of this Court duly and regularly made in this behalf, and that the same is in proper form and conforms to the truth, and that it may be settled, allowed, signed and authenticated by this Court as the true Bill of Exceptions herein, and that it may be made a part of the record in this cause.

Dated this 19th day of October, 1915.

Clarence L. Reames,  
United States Attorney.

J. L. McNab,  
Attorney for Defendant.

*In the District Court of the United States, for the  
District of Oregon.*

UNITED STATES OF AMERICA, *Plaintiff,*

vs.

THOMAS R. SHERIDAN, *Defendant.*

The above and foregoing Bill of Exceptions, duly proposed by the defendant, Thomas R. Sheridan, and duly agreed upon by the respective parties hereto, having been presented to the Court within the time allowed and required by law and by the rules and orders of this Court duly and regularly made in that behalf, is hereby settled, allowed, signed and authenticated as in proper form and as conforming to the truth and as the true Bill of Exceptions herein, and is hereby made a part of the record in this cause.

Dated this 19th day of October, 1915.

Frank H. Rudkin,  
Judge of the District Court  
of the United States for the  
District of Oregon.

Filed October 25, 1915.—G. H. Marsh, Clerk.

AND AFTERWARD, to-wit: on the 25th day of October, 1915, there was duly filed in said Court and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

### PETITION FOR WRIT OF ERROR.

Now comes Thomas R. Sheridan, defendant in the above-entitled cause, and brings this his Petition for a Writ of Error to the District Court of the United States for the District of Oregon, and respectfully shows:

That on the 30th day of April, 1915, there was rendered and entered in the above-entitled court a judgment and sentence against him, the above-named defendant, whereby said defendant was adjudged and sentenced to be imprisoned for the term of five (5) years in the United States Penitentiary at McNeil's Island, State of Washington, in which judgment and sentence against said defendant, and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of said defendant, all of which will more in detail appear from the Assignment of Errors which is filed with this Petition.

WHEREFORE, said above-named defendant prays that a Writ of Error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be

sent to the said Circuit Court of Appeals, and that all further proceedings in the above-entitled District Court be suspended, stayed, and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Errors in said United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 19th, 1915.

J. L. McNab,  
Attorney for Defendant,  
Thomas R. Sheridan.

Due service of the within is hereby admitted this 25th day of October, 1915.

Clarence L. Reames,  
United States Attorney.

Filed October 25, 1915.—G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 25th day of October, 1915, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to-wit:

#### ASSIGNMENT OF ERRORS.

Thomas R. Sheridan, defendant in the above-entitled action, and plaintiff in error herein, having petitioned for an order from said Court permitting him to procure a Writ of Error from this Court directed from the United States Circuit Court of Appeals for the Ninth

Circuit from the judgment and sentence made and entered in said cause, against said plaintiff in error, and petitioner herein, now makes and files with his said petition the following assignment of errors herein upon which he will rely for a reversal of said judgment and sentence upon the said writ, and which said errors, and each and every of them, are to the great detriment, injury and prejudice of the said defendants and in violation of the rights conferred upon him by law; and he says that in the record and proceedings in the above-entitled cause upon the hearing and determination thereof in the District Court of the United States for the District of Oregon there are manifest errors in this, to-wit:

### I.

The Court erred in charging the jury as follows:

“The principal question for your consideration will be—or at least the first question for your consideration will be: Was the defendant authorized by the depositors to withdraw these moneys? If you find from the testimony in this case that he was so authorized, or if you find from the course of dealing between the defendant and the depositor that the defendant had reasonable cause to believe and on good faith did believe that he was so authorized, then he is not guilty of the crime here charged. But if you are satisfied beyond a reasonable doubt that he had no authority from the depositor to withdraw the funds, and if you further find that he had no reasonable cause to believe and did not in good faith believe that he had such authority, then

his abstraction of the funds was wrongful, and the crime is complete if you find that the abstraction was made with the intent to injure or defraud either the banking association or the depositor."

The defendant excepted to the action of the Court in giving the above instruction to the jury, for the reason that the uncontradicted evidence introduced in this cause was that the accounts of all the depositors who testified in this cause were general checking accounts, that therefore there was merely a debtor and creditor relation between the bank and the depositor, that the defendant had exclusive authority to make loans for the bank, and consequently was not required to obtain authority from the depositors before withdrawing or abstracting any money so deposited from the bank for the purpose of making loans. Said exception was duly allowed by the Court.

## II.

The Court erred in overruling the demurrer of said defendant to the indictment herein, and to each and every, all and singular, of the counts thereof, for the reason that the matters therein contained, in the manner and form as the same are stated and set forth in said indictment, were not sufficient in law, and that the said defendant was not bound by the law to answer the same, because it is not charged in said indictment, or in any of the counts thereof, by whom the "certain instrument designated as a memorandum check" was drawn, and that therefore it is to be presumed that said

memorandum check was drawn by the depositor and not by the defendant.

To which ruling of the Court said defendant then and there duly and regularly excepted.

### III.

The Court erred in overruling the objection of the defendant to the introduction of any evidence under the indictment, said objection having been made upon the ground that said indictment failed to state an offense under Section 5209 of the Revised Statutes of the United States, or under the penal code of the United States, or any offense whatever.

To which ruling of the Court said defendant then and there duly and regularly excepted.

### IV.

The Court erred in overruling the demurrer of said defendant to the indictment herein, for the reason that said indictment was insufficient in law.

To which ruling of the Court said defendant then and there duly and regularly excepted.

### V.

The Court erred in denying the motion of defendant that the Court withdraw from the jury all testimony that had been given by the witness David Hull concerning the \$800 memorandum check and promissory note,

for the reason that said testimony had no relation to the matters charged in the indictment.

To which ruling of the Court said defendant then and there duly and regularly excepted.

Said testimony so asked to be withdrawn was as follows:

Direct examination of David Hull: I never signed this memorandum check dated December 23, 1913, for \$800 and purporting to be signed by me, but I got a note for it signed by Mr. Sheridan. (The Government requested that the check be marked Government's Exhibit 3 for identification and the check was so marked.) I first learned of this \$800 transaction about a year or a year and a half ago. I put it in lawyer Eddy's hands. I didn't know anything about any notes at all, anything in the bank. Mr. Eddy found out that the notes were in the bank. \$460 of that loan was paid, besides the interest; of course the interest was paid, you know, part of it. I have the note of John Sheridan. He paid \$460.00 on the note. My lawyer got the note from the bank. It is signed John Sheridan, by Tom Sheridan. \$400 was paid on it, and \$160 interest.

## VI.

The Court erred in overruling the objection of the defendant to the following question put to the Government's witness, S. A. Sanford, on his direct examination:

MR. REAMES: Q. Now, then, prior to the time of that credit of \$230 in the account of Mr. B. C. Agee, what was the condition of Mr. Agee's account?

MR. FULTON: I object to that, because whether the account was in overdraft or not does not in any manner that I can conceive of tend to throw any light upon whether or not he had the authority to take the money.

THE COURT: Answer the question. Objection overruled.

MR. FULTON: Exception.

THE WITNESS: A. The account was overdraft \$229.67 on the day immediately prior to the credit.

## VII.

The Court erred in overruling the objection of the defendant to the following questions put to the Government's witness, S. A. Sanford, on his direct examination:

MR. REAMES: Q. Now turn to the individual ledger at page 600; is that the account of David Hull?

A. Yes, sir.

Q. Now, I hand you herewith a memorandum check, Government's Exhibit No. 3, for identification, and will ask you to examine the same and say in whose handwriting that is.

A. The handwriting of Mr. Sheridan.

MR. FULTON: That is that one regarding the \$800 transaction?

MR. REAMES: That is the J. T. Sheridan transaction.

MR. FULTON: On that ground and the reasons already stated to Your Honor we base our objection, we object to that and wish to save an exception.

THE COURT: Yes.

## VIII.

The Court erred in overruling the objection of the defendant to the following questions put to the Government's witness, S. A. Sanford, on his direct examination:

Q. Now, look under date of December 23, 1909, and read the item that appears there.

A. December 23.

Q. 1909?

A. 1909. David Hull's account was charged there with \$800.

Q. With \$800. Now, what did that charge of \$800 do to David Hull's account?

A. Overdrew his account, I notice.

MR. FULTON: We wish the same objection to all of that.

THE COURT: The same ruling.

MR. FULTON: I wish to save an exception.

Q. What did it do to that?

A. Overdrew it, \$263.50.

## IX.

The Court erred in sustaining the objection of the Government to the following question put to the Government's witness B. C. Agee on his cross-examination:

Q. And if he had told you just about the note, why it would have been all right; you would have considered it all right, wouldn't you?

The Government's objection to the above question was sustained, whereupon defendant then and there duly and regularly excepted to said action of the Court.

## X.

The court erred in sustaining the objection of the Government to the following question put to the Government's witness B. C. Agee on his cross-examination:

Q. Now, Mr. Agee, I ask you if you haven't—I don't remember the names of the persons, but if you haven't said to many people in Roseburg many times since this occurred that whatever Mr. Sheridan did in respect of using your name in that matter was with your authority, he had a right to do so in transacting the business?

The Government's objection to the above question was sustained by the Court, to which ruling the defendant then and there duly and regularly excepted.

## XI.

The Court erred in overruling the objection of the defendant to the following question put to the Government's witness W. E. Chapman on his direct examination:

Q. What conversation, if any, did you have with Mr. Sheridan about loaning your money?

The defendant objected to the question on the ground that the witness was not one named in the indictment and the subject-matter of the question had no relation to any of the matters contained in the indictment, which said objection was overruled by the Court, to which action of the Court the defendant then and there duly and regularly excepted.

The above question was answered as follows: I went in and told Sheridan I would like to have enough money in there to loan and I said, "I will place enough in there to make it even up six hundred dollars." When I first went in I said, "Tom, I would like to loan the money I have in the bank," and I said, "I will put enough in to even up six hundred dollars." And Tom said, "I can loan it for you," and that is all there was said about it. I had a chance after that to loan my money, but I found out that I didn't have any money in the bank. I never signed this memorandum check, Government's Exhibit 17.

## XII.

The Court erred in overruling the objection of the defendant to the following question put to the Govern-

ment's witness Moses S. Doerstler on his direct examination:

Q. Now, here is a memorandum check of April 8, 1908, signed M. S. Doerstler, marked draft \$1,000, and a promissory note of the same date, \$1,000, signed T. R. Sheridan, in favor of M. S. Doerstler. I will ask you to look at those and tell the jury when you first saw those—I will say to the Court that this is not one of the indictments, so that your objection may go to this.

The defendant objected to the above question, and the Court overruled the objection; thereupon defendant duly and regularly excepted to said ruling of the Court.

The answer to the above question was:

A. I never seen the note. Of course I didn't know about the memorandum check. I don't know why I should have Mr. Sheridan's note.

### XIII.

The Court erred in admitting in evidence, over the objection of the defendant, the document or promissory note marked Government's Exhibit 25; to which action of the Court the defendant then and there duly and regularly excepted.

### XIV.

The Court erred in overruling the objection of the defendant to the introduction in evidence of the promissory notes, Government's Exhibits 33 and 35, and to

the following questions put to the Government's witness C. E. Marks on his direct examination:

Q. When did you first see these two notes, Government's Exhibits 33 and 35?

The defendant objected to the above question and the Court overruled the objection; to which ruling of the Court the defendant then and there duly and regularly excepted.

The answer to the above question was: A. I first saw this promissory note about a year and a half after the Douglas National Bank and the First National Bank were consolidated. I first saw this note, Government's Exhibit 35, the same as I seen the other note, Exhibit 33, they were all in the First National Bank a year and a half after they were closed up.

## XV.

The Court erred in overruling the objection of the defendant to the introduction in evidence of Government's Exhibits 37 and 38, and to the following questions put to the Government's witness Harry P. Marks on his direct examination:

Q. When did you first see these papers?

To which question the defendant objected and the Court overruled the objection; to which action of the Court the defendant then and there duly and regularly excepted.

The answer to the above question was: I first saw this memorandum check and note after I got them from my father.

XVI.

The Court erred in overruling the objection of the defendant to the introduction in evidence of Government's Exhibits 39 and 40.

To which action of the Court the defendant then and there duly and regularly excepted.

XVII.

The Court erred in overruling the objection of the defendant, on the ground that they did not relate to matters contained in the indictment, to the following questions put to the Government's witness C. J. Marks on his direct examination:

Q. When did you first see this check and note?

Q. Did you sign this release?

The defendant objected to the above questions and the Court overruled the objections; to which action of the Court the defendant then and there duly and regularly excepted.

The answers to the above questions were: I first saw this memorandum check and note after I got them from my father. Yes, I signed this release and knew it wasn't true when I signed it.

XVIII.

The Court erred in overruling the objection of the defendant, on the ground that it did not relate to any of the matters contained in the indictment, to the fol-

lowing question put to the Government's witness Edward C. Marks on his direct examination:

Q. Did you ever authorize Mr. Sheridan to loan your money?

The defendant objected to said question and the Court overruled the objection; to which action of the Court the defendant then and there duly and regularly excepted.

The answer to the above question was:

A. No, I never authorized Mr. Sheridan to loan my money.

## XIX.

The Court erred in overruling the objection of the defendant to the following question put to the Government's witness E. E. Haines on his direct examination:

Q. This memorandum check, have you seen it before, it is dated April 6, 1908?

The defendant objected to the above question on the ground that the transaction in which it was involved occurred at too remote a date to permit it to be introduced as a similar offense, and the Court overruled the objection; to which action of the Court the defendant then and there duly and regularly excepted.

The answer to the above question was: No, I have never seen this note before, Government's Exhibit 52.

## XX.

The Court erred in overruling the objection of the defendant to the following question put to the Govern-

ment's witness John E. Marks on his direct examination:

Q. Did you ever authorize Mr. Sheridan to loan your money for you?

The defendant objected to the question and the Court overruled the objection, to which action of the Court the defendant then and there duly and regularly excepted.

The answer to the question was: No, I never authorized Mr. Sheridan to loan my money for me, and I never authorized this memorandum check Government's Exhibit 50.

## XXI.

The Court erred in charging the jury as follows:

"Where fraud is the question at issue evidence of frauds of like character committed by the same parties at or near the same time is admissible. Its admissibility is placed on the ground that where transactions of a similar character executed by the same parties are closely connected in point of time, the inference is reasonable that they proceeded from the same motive. The case of fraud as here stated is among the few exceptions to the general rule that other offenses of the accused are not relevant to establish the main charge."

The defendant excepted to the action of the Court in giving the above instruction to the jury, for the reason that the evidence which the Court permitted to be introduced of similar separate and independent trans-

actions should not be considered by the jury for any purpose in determining the defendant's guilt or innocence of the charges contained in the indictment.

## XXII.

The Court erred in charging the jury as follows:

"If, therefore, you find from the evidence beyond a reasonable doubt that the defendant, Thomas R. Sheridan, without having previously secured the authority of the depositors so to do, or without apparent authority as I have defined that term to you, wilfully abstracted the funds of the bank then held in said bank to the credit of said depositors in manner and form as alleged in the indictment, and converted said funds to his own use and benefit, the intent to injure and defraud both the bank and the said depositors may be by you presumed. Acts which involve such consequences, when knowingly and wrongfully committed, establish not only the guilty intent to injure and defraud mentioned in the statute, but they disclose moral turpitude utterly inconsistent with an innocent intent."

The defendant duly excepted to the action of the Court in giving the above instruction to the jury, for the reasons set forth in Assignment of Error No. 1 herein, which said exception was allowed by the Court.

## XXIII.

The Court erred in charging the jury as follows:

"It is presumed that every person intends the natural and ordinary consequences of his own acts. Applying

this rule to the case at bar, if you should find from the evidence beyond a reasonable doubt that the defendant without authority took from the accounts of his depositors named in the indictment, *without previous authorization from them*, their money and converted the same to his own use and benefit, and thereby placed the same beyond the control of said depositors, you would be justified then in presuming that he did these acts with intent to injure and defraud said depositors.”

The defendant duly excepted to the action of the Court in giving the above instruction to the jury, for the reasons set forth in Assignment of Error No. 1 herein, which said exception was allowed by the Court.

## XXIV.

The Court erred in refusing to give the following instruction No. 1 requested by defendant:

I instruct you, gentlemen of the jury, to return a verdict in favor of the defendant, *Thomas R. Sheridan*.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

## XXV.

The Court erred in refusing to give the following instruction No. 2 requested by defendant:

I instruct you to return a verdict for the defendant on the ground that there has not been sufficient evidence

introduced in this case to warrant your finding an intent to defraud on the part of the defendant.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

## XXVI.

The Court erred in refusing to give the following instruction No. 3 requested by defendant:

I instruct you to return a verdict in favor of the defendant on the ground that there has not been sufficient evidence introduced in this case to support a finding by you that defendant had no authority to lend to himself or persons other than the depositors the money which had been deposited in the bank of which he was the president.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

## XXVII.

The Court erred in refusing to give the following instruction No. 4 requested by defendant:

I instruct you that the legal relation between the depositors who have testified in this case and the First National Bank of Roseburg, Oregon, was that of debtor and creditor, and if you find that the defendant had sole charge of making loans on behalf of the bank, he

had a right to withdraw for the purpose of making such loans, either to himself or others, the moneys so deposited in the bank.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXVIII.

The Court erred in refusing to give the following instruction No. 5 requested by defendant:

I instruct you that a person who deposits money in a National Bank, such as the First National Bank of Roseburg, Oregon, was at the times referred to during the hearing of this case, thereby establishes between himself and the bank the relation of debtor and creditor, and the officer or officers of the bank who have charge of making loans on behalf of the bank have a right to lend any portion or all of the money so deposited without first obtaining permission from the depositor to do so.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXIX.

The Court erred in refusing to give the following instruction No. 6 requested by defendant:

A national bank opening a general checking account with a depositor is not required to keep the moneys so

deposited separate from the other moneys of the bank so that the depositor may withdraw the identical money which he has deposited, but on the contrary the bank may lend such money to third persons or otherwise invest it on behalf of the bank.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXX.

The Court erred in refusing to give the following instruction No. 7 requested by defendant:

If you find that the defendant had sole power as president to make loans for the First National Bank of Roseburg, Oregon, and had authority to withdraw the funds of the bank for that purpose, the defendant would have a right to withdraw the moneys deposited in that bank by the depositors therein who have testified as witnesses in this case.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXXI.

The Court erred in refusing to give the following instruction No. 8 requested by defendant:

Authority to withdraw, for the purpose of making loans for the bank, funds or moneys deposited by per-

sons opening general checking accounts in National Banks may legally be vested in the president of the bank by the board of directors or by-laws of the bank.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXXII.

The Court erred in refusing to give the following instruction No. 9 requested by defendant:

If you find that the defendant attempted, without authority from the depositor, to reduce, by means of a memorandum check or charge slip, the amount of money which had theretofore been credited by the bank to the depositor, you cannot simply because of such act find the defendant guilty of misapplying or abstracting the moneys of the depositor, because the amount credited by the bank to the depositor cannot be reduced by that means.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXXIII.

The Court erred in refusing to give the following instruction No. 10 requested by defendant:

An officer of a bank cannot, without previous authorization to do so by the depositor, reduce, by means

of a memorandum check or charge slip, the amount of money owing from the bank to the depositor.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

#### XXXIV.

The Court erred in refusing to give the following instruction No. 11 requested by defendant:

If you find that the defendant had exclusive power to make loans for the bank, then the defendant was not required to obtain the consent of a depositor having a checking account to the withdrawal, for the purpose of making loans on behalf of the bank, of the moneys deposited by the depositor.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

#### XXXV.

The Court erred in refusing to give the following instruction No. 12 requested by defendant:

There is some testimony on the part of the prosecution tending to show that in some instances a depositor authorized the defendant to take his or her money then on deposit in the bank and loan it on good security and that defendant thereupon took the money and used it himself, placing his personal note in the bank for it.

The defendant, however, contends that in all such cases the depositor authorized him to use the money himself, if he desired so to do. I instruct you, however, that so far as this case is concerned, if you find that as to any sum of money mentioned in any count of the indictment the defendant was authorized to take the same but instructed to loan it on security only and that he thereupon took the money and used it himself, you cannot find him guilty for so doing, for in such case he had authority to withdraw the money from the bank and if, after withdrawing it, he did not loan it as directed but used it himself, he did not thereby violate the statute under which he is being prosecuted here.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

### XXXVI.

The Court erred in refusing to instruct the jury to return a verdict for the defendant on the ground that sufficient evidence in law of intent to defraud on the part of the defendant had not been introduced in this cause; to which ruling of the Court the defendant then and there duly and regularly excepted.

### XXXVII.

The Court erred in refusing to instruct the jury to return a verdict in favor of the defendant on the ground that sufficient evidence in law had not been introduced

in this cause that defendant did not have authority to withdraw or abstract the money deposited in the bank of which he was the president in the manner and by the method which the uncontradicted evidence showed had been employed by him; to which ruling of the Court the defendant then and there duly and regularly excepted.

### XXXVIII.

The Court erred in refusing to instruct the jury that sufficient evidence had not been introduced to justify the jury in finding that defendant withdrew or abstracted money belonging to any of the depositors who have testified as witnesses in this case; to which ruling of the Court the defendant then and there duly and regularly excepted.

### XXXIX.

The Court erred in refusing to give the following instruction requested by defendant:

I ask the Court at this time to instruct the jury that the indictment in this case charges the defendant with having abstracted moneys, funds and credits of the First National Bank of Roseburg, Oregon, and that therefore, if the jury find that the moneys, funds, or credits abstracted by the defendant as shown by the evidence in this case were moneys, funds, or credits of the depositors who have testified in this case, the jury should find the defendant not guilty.

The defendant then and there duly and regularly excepted to the action of the Court in refusing to give said requested instruction.

**XL.**

The Court erred in failing to instruct the jury that sufficient evidence in law had not been introduced in this cause to justify the jury in finding that any of the depositors who had testified in this case had been defrauded by the acts of defendant; to which omission, failure and refusal of the Court the defendant then and there duly and regularly excepted.

**XLI.**

The Court erred in overruling and denying defendant's motion in arrest of judgment.

**XLII.**

The Court erred in abusing its judicial discretion in overruling and denying defendant's motion for a new trial hereof; and, in this connection, in refusing to hold and decide:

(1) That the verdict herein was contrary to the evidence adduced upon the trial hereof;

(2) That said evidence was insufficient to justify said verdict; and,

(3) That said verdict was contrary to law for the reasons in this Assignment of Errors particularly set forth.

## XLIII.

The Court erred in pronouncing judgment and sentence against the defendant.

WHEREAS, by the law of the land, said judgment ought to be given for said defendant Thomas R. Sheridan, plaintiff in error herein, and against the plaintiff United States of America, defendant in error herein, said defendant Thomas R. Sheridan does now pray that the judgment herein rendered against him be reversed and annulled and altogether held for nothing, and the sentence herein imposed upon him be set aside and held for naught, and that he be restored to all things which he has lost by occasion of the said judgment; that the said District Court be directed to sustain defendant's demurrer to said indictment, or to grant a new trial of said cause; and that defendant be afforded such and any and all other relief as may be meet in the premises.

Dated this 19th day of October, A. D. 1915.

J. L. McNab,  
Attorney for said Defendant  
Thomas R. Sheridan.

Due service of the within Assignment of Errors by delivery of a copy to the undersigned is hereby admitted this 19th day of October, 1915.

Clarence L. Reames,  
United States Attorney.

United States of America,  
District of Oregon—ss.

I hereby certify that the foregoing Assignment of Errors is made on behalf of petitioner for a Writ of Error herein, and is in my opinion well taken, and the same now constitutes the Assignment of Errors upon the writ prayed for.

J. L. McNab,  
Attorney for Plaintiff in Error.

Filed October 25, 1915—G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on Monday, the 25th day of October, 1915, the same being the ninety-seventh judicial day of the regular July, 1915, term of said Court, the following order of the Honorable Frank H. Rudkin, United States District Judge for the Eastern District of Washington was entered of record in said court, to-wit:

#### ORDER ALLOWING WRIT OF ERROR.

Thomas R. Sheridan, the defendant in the above-entitled cause, having filed herein and presented to the Court his petition praying for the allowance of a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the above-entitled court, and having submitted therewith the Assignment of Errors intended to be urged by him; praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United

States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above-entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals;

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised, and the above-named defendant having heretofore submitted to the above-entitled Court his bond for appearance in the United States District Court for the District of Oregon, or in the United States Circuit Court of Appeals for the Ninth Circuit, as may hereafter in this cause be ordered, in the sum of six thousand dollars (\$6,000.00), said sum being the amount of bail heretofore fixed by this Court for said defendant, and said bond having been heretofore accepted and approved by this Court;

IT IS HEREBY ORDERED that the aforesaid Writ of Error be, and the same is, hereby allowed; and

IT IS FURTHER ORDERED that a transcript of the record, proceedings, and papers in this cause, duly authenticated, be sent to the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that all further proceedings in this above-entitled District Court be suspended, stayed, and superseded until the final disposition of said Writ of Error in the aforesaid United

States Circuit Court of Appeals for the Ninth Circuit;  
and

IT IS FURTHER ORDERED that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that the bond for costs upon the Writ of Error herein be, and it is hereby, fixed at the sum of One hundred dollars.

Dated October 19th, 1915.

Frank H. Rudkin,  
United States District Judge.

Filed October 25, 1915—G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit: on the 29th day of October, 1915, there was duly filed in said Court and cause, a Bond on Writ of Error, in words and figures as follows, to-wit:

## BOND.

*In the District Court of the United States, for the  
District of Oregon.*

UNITED STATES OF AMERICA, *Plaintiff,*

vs.

THOMAS R. SHERIDAN, *Defendant.*

BOND FOR COSTS ON WRIT OF ERROR TO  
THE DISTRICT COURT OF THE  
UNITED STATES FOR THE DISTRICT  
OF OREGON.

KNOW ALL MEN BY THESE PRESENTS,  
That we, Thomas R. Sheridan, as principal, and Timothy Healy, as surety, are held and firmly bound unto the United States of America in the full and just sum of One Hundred Dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of October, in the year of our Lord, one thousand nine hundred and fifteen.

WHEREAS, lately at a District Court of the United States for the District of Oregon, in a suit depending in said Court, between the United States of America, plaintiff, and Thomas R. Sheridan, defendant, a judgment and sentence were rendered against the said

Thomas R. Sheridan, and the said Thomas R. Sheridan having obtained from said Court a writ of error to reverse the said judgment and sentence against him in the aforesaid cause, and a citation directed to the said United States of America, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, within thirty (30) days from and after the day of said citation, which citation has been duly served;

NOW the condition of the above obligation is such that if the said Thomas R. Sheridan shall prosecute said Writ of Error to effect, and answer all costs involved therein, then the above obligation to be void; else to remain in full force and virtue.

Thomas R. Sheridan, (Seal)

By J. L. McNab, his Attorney.

Timothy Healy. (Seal)

Signed, sealed, taken, and acknowledged before me this 19th day of October, 1915.

Walter B. Maling, (Seal)

United States Commissioner,  
Northern District of California.

Form of bond and sufficiency of surety approved this 25th day of October, 1915.

Frank H. Rudkin,

United States District Judge.

Filed October 29, 1915—G. H. Marsh. Clerk.

United States of America,  
District of Oregon—ss.

I. G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on writ of error in the case in which the United States of America is plaintiff and defendant in error and Thomas R. Sheridan is defendant and plaintiff in error in accordance with the law and the rules of the Court and in accordance with the praecipe of said plaintiff in error, and that the said transcript is a full, true, and correct transcript of the record of proceedings had in said Court in said cause in accordance with the said praecipe as the same appear of record on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Portland in said District, this            day of November, 1915.

Clerk.